

EXHIBIT 29

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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DAVID JONES, :

Plaintiff, : Civil Action No.

v. : 1:13-cv-11196-MGM

LINDA HAN, et al., :

Defendants. :

----- x

BEFORE THE HONORABLE MARK G. MASTROIANNI, DISTRICT JUDGE

JURY TRIAL

Wednesday, March 9, 2016
2:08 p.m.

John J. Moakley United States Courthouse
Courtroom No. 8
One Courthouse Way
Boston, Massachusetts

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P R O C E E D I N G S

(In open court.)

THE COURT: Can I see counsel at sidebar.

During the lunch break, was everyone able to follow my instructions not to talk to anyone about the case, or do any deliberations or research, or go on the Internet in any way, shape, or form about the case.

THE JURY: (Negative responses.)

THE COURT: Is there any issues that anyone needs to talk to me about?

THE JURY: (Negative responses.)

THE COURT: You're going to get a complex.

(The following discussion held at the bench.)

THE COURT: All right. How did you guys do on the lunch about this issue of examining the witnesses?

MR. TUMPOSKY: Perhaps I overstated it somewhat, Your Honor. I think the issue is sort of getting two direct examinations. In other words, if they -- they can do their direct after I do my direct, if I do an adverse direct.

THE COURT: So you do your adverse direct, they cross.

MR. TUMPOSKY: Right. But they can't go beyond the scope, I would argue, of what I brought out, unless they're doing their direct. It wouldn't seem they

02:10:39 1 get two cracks at: What's your education, what's your
02:10:41 2 training.

02:10:41 3 THE COURT: Yeah.

02:10:42 4 MR. TUMPOSKY: That would be my position.

02:10:45 5 THE COURT: Come on in.

02:10:47 6 Yeah, I think that's fair. I think you can do
02:10:49 7 your adverse direct, you do a cross. And you reserve your
02:10:53 8 right to call these people again, but not to go over the
02:10:56 9 same thing.

02:10:58 10 MR. KELLY: Right.

02:10:59 11 THE COURT: That sounds fair to me.

02:11:01 12 MR. GRACE: That's what we intended.

02:11:03 13 MR. KELLY: And I think the crosses will be
02:11:05 14 relatively confined and brief, Your Honor.

02:11:07 15 THE COURT: That does sound reasonable.

02:11:09 16 MR. TUMPOSKY: That's fine, Your Honor.

02:11:10 17 THE COURT: All right. Good.

02:11:26 18 (Bench conference concluded.)

02:09:48 19 THE COURT: Okay. Jarrett, you can have
02:09:52 20 these back.

02:10:12 21 THE DEPUTY CLERK: Thank you.

02:10:13 22 THE COURT: Whenever you're ready.

02:10:16 23 MR. TUMPOSKY: The plaintiff calls Linda Han.

02:10:29 24 (The witness was duly sworn.)

02:10:36 25 THE DEPUTY CLERK: Please state you full

02:10:37 1 name, spelling your last.

02:10:40 2 THE WITNESS: Linda Han, H-a-n.

02:10:40 3 **LINDA HAN**

02:10:52 4 having been duly sworn, testified as follows:

02:10:52 5 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF**

02:10:52 6 BY MR. TUMPOSKY:

02:10:54 7 Q. Good afternoon, Dr. Han.

02:10:57 8 A. Good afternoon.

02:10:58 9 Q. In the time period of 2009, or 2008 to 2012, you
02:11:05 10 were the director of the State Laboratory Institute,
02:11:09 11 correct?

02:11:10 12 A. 2009 to 2010, I was acting director of the State
02:11:15 13 Laboratory. From 2010 to 2012, I was the actual director
02:11:20 14 of the Bureau of Laboratory Sciences.

02:11:23 15 Q. And one of your roles as the director of the
02:11:27 16 Bureau of Laboratory Sciences was to oversee the Hinton drug
02:11:31 17 lab, correct?

02:11:34 18 A. That's correct.

02:11:38 19 Q. Directly below you was Ms. Nassif, correct?

02:11:44 20 A. Yes.

02:11:44 21 Q. And she was in charge of analytical chemistry?

02:11:51 22 A. Yes.

02:11:51 23 Q. And one of the labs that she was in charge of was
02:11:55 24 also the Hinton drug lab?

02:12:00 25 A. Yes.

02:12:00 1

Q. And so she reported to you.

02:12:00 2

A. Yes.

02:12:00 3

Q. And Mr. Salemi reported to Ms. Nassif?

02:12:04 4

A. That's correct.

02:12:04 5

Q. Now, as a -- as the head of the State Laboratory

02:12:09 6

Institute, you had certain responsibilities as it related to

02:12:13 7

the drug lab, right?

02:12:15 8

A. Yes.

02:12:15 9

Q. It was your job to make sure that all the labs

02:12:21 10

under your purview ran smoothly?

02:12:24 11

A. Yes.

02:12:25 12

Q. And that they were run with integrity.

02:12:28 13

A. Yes.

02:12:29 14

Q. And that the processes followed in the lab were

02:12:34 15

scientific, right?

02:12:35 16

A. That's correct.

02:12:36 17

Q. And it was important that the lab -- the labs

02:12:41 18

under your purview be accurate?

02:12:43 19

A. That's correct.

02:12:44 20

Q. And so part of your responsibility, then, is to

02:12:47 21

make sure that the people who are working for you are doing

02:12:50 22

their job?

02:12:51 23

A. That's correct.

02:12:52 24

Q. So you have to make sure that Ms. Nassif is

02:12:56 25

performing her role correctly.

02:12:58 1 A. That's correct.

02:12:59 2 Q. And you would be responsible for making sure that
02:13:02 3 Mr. Salemi is performing his role correctly?

02:13:06 4 A. Yes. We had an organizational structure.

02:13:09 5 Q. Right. And so as the director of the lab, you are
02:13:12 6 responsible for making sure that all of the employees of the
02:13:16 7 drug lab are doing what they're supposed to be doing.

02:13:20 8 MR. MARINO: Objection, Your Honor. I think
02:13:22 9 it's leading.

02:13:24 10 THE COURT: Yeah, it is leading. You called
02:13:28 11 this witness, adverse witness. I may allow some leading,
02:13:35 12 but let's see where it goes with just your regular direct
02:13:39 13 exam first.

02:13:40 14 MR. TUMPOSKY: Your Honor, could I be heard
02:13:42 15 on that?

02:13:43 16 THE COURT: No.

02:13:47 17 BY MR. TUMPOSKY:

02:13:47 18 Q. Was your role to make sure that all the chemists
02:13:57 19 were doing their job?

02:13:58 20 A. I had the responsibility for the entire Bureau
02:14:00 21 of Laboratory Sciences, the 120 or so people, and wanted
02:14:03 22 to make sure that at all times they were doing what they
02:14:08 23 were supposed to be doing.

02:14:11 24 Q. The lab had some policies, right?

02:14:14 25 A. Yes.

02:14:17 1 Q. And you're familiar with these?

02:14:19 2 A. Yes.

02:14:19 3 Q. And the policies that were in effect in 2009/2010,
02:14:28 4 when were those drafted?

02:14:29 5 A. They were originally dated 2004. And my
02:14:36 6 understanding is it was a living document and an ongoing
02:14:40 7 work in progress, to be updated as changes occurred.

02:14:43 8 Q. Was there ever any formal review and updating of
02:14:47 9 the policies after 2004?

02:14:49 10 A. I'm not -- I don't know.

02:14:51 11 Q. And the policies in 2004 were -- made reference to
02:14:59 12 another organization; is that right?

02:15:02 13 A. Yes.

02:15:03 14 Q. And they referred specifically to the Scientific
02:15:06 15 Working Group for the analyses of these drugs?

02:15:13 16 A. Yes.

02:15:13 17 Q. And the policies of the lab were supposed to
02:15:17 18 adhere to the requirements of the Scientific Working Group,
02:15:21 19 right?

02:15:21 20 A. They were consistent with the SWG Group. I
02:15:25 21 don't know if all of the practices were a good fit for
02:15:30 22 what activities were taking place in the laboratory.

02:15:34 23 Q. Right. Because, in fact, the SWG, Scientific
02:15:42 24 Working Group policies were supposed to be minimum
02:15:47 25 standards, right?

02:15:47 1 A. I don't know.

02:15:48 2 Q. And the lab was supposed to have policies above
02:15:51 3 and beyond what the Scientific Working Group recommended.

02:15:55 4 A. There's often modifications to account for
02:16:00 5 specific -- the specific setting of each laboratory.

02:16:04 6 Q. Right. So it's not enough, you would agree, just
02:16:07 7 to say, "Our policies incorporate SWG drugs," right?

02:16:14 8 A. I understand that our policies were based on the
02:16:17 9 SWG drug.

02:16:18 10 Q. And do you believe that there were certain
02:16:21 11 policies that you had that were in direct conflict with SWG
02:16:25 12 drug?

02:16:26 13 A. I'm -- I don't know.

02:16:27 14 Q. All right. Did you have a part in crafting and
02:16:32 15 formulating the policies at the drug lab?

02:16:35 16 A. I did not.

02:16:36 17 Q. Whose responsibility was that?

02:16:39 18 A. That would go to the subject matter experts, the
02:16:44 19 supervisors and the --

02:16:45 20 Q. And who are you referring to when you say that?

02:16:48 21 A. If I had a question about drug operations, my
02:16:51 22 first stop would be with Julie Nassif. Chuck Salemi has
02:16:59 23 also been a valuable resource with respect to his
02:16:59 24 knowledge of the laboratory operations.

02:17:02 25 Q. Okay. Because you, yourself, don't have a

02:17:04 1 background in drug testing, right?

02:17:07 2 A. That's correct.

02:17:07 3 Q. You don't have a background in forensic chemistry?

02:17:12 4 A. Not at all.

02:17:15 5 Q. So Ms. Nassif and Mr. Salemi, they were
02:17:18 6 responsible for making the written policies?

02:17:20 7 A. Yes.

02:17:20 8 Q. Are you familiar with the term "accreditation"?

02:17:28 9 A. Yes.

02:17:28 10 Q. What does that mean to you?

02:17:30 11 A. To me, it means you, as an organization, would
02:17:38 12 meet a series of requirements and standards set forth by
02:17:45 13 an agency as a standard for the industry.

02:17:52 14 Q. And the William A. Hinton drug lab was not
02:17:59 15 accredited; is that correct?

02:18:02 16 A. That's correct.

02:18:03 17 Q. And one of the reasons for that was because the
02:18:05 18 policies weren't sufficiently robust?

02:18:09 19 A. The primary reason for lack of accreditation was
02:18:13 20 resources. Ms. Nassif was an ardent supporter of
02:18:17 21 accreditation, and I supported her interest in bringing on
02:18:21 22 as many elements of accreditation as we could, given the
02:18:26 23 funding available.

02:18:40 24 Q. And accreditation would have cost between ten and
02:18:44 25 \$25,000 per year, right?

02:18:46 1 A. I don't believe that was the total cost of
02:18:48 2 accreditation. In my other -- we had another laboratory
02:18:53 3 in the building that was seeking accreditation in that
02:18:57 4 time frame, and we were only able to even consider it on
02:19:01 5 the basis of our having successfully earned grant funding
02:19:05 6 from a federal source for over a million dollars.

02:19:09 7 Q. So if you had grant funding, you could then move
02:19:12 8 to accreditation?

02:19:13 9 A. Yes. In that instance, of that particular
02:19:16 10 laboratory, we were able to proceed with accreditation.

02:19:19 11 Q. Right. But as far as this particular laboratory,
02:19:22 12 the cost for obtaining accreditation would have been between
02:19:26 13 ten and \$25,000 per year?

02:19:28 14 A. No. I'm not exactly sure how much it costs, but
02:19:32 15 that is a very small amount of money.

02:19:35 16 Q. And can you tell us what benefits accreditation
02:19:42 17 would provide?

02:19:43 18 A. You could -- it's an indicator of laboratory
02:19:52 19 quality. It's a benchmark. You can say, "We are
02:19:57 20 accredited." It gives you confidence. People have
02:19:59 21 enhanced confidence in the result. It's just like a
02:20:02 22 credential.

02:20:03 23 Q. What about the other labs in your -- under your
02:20:05 24 purview? Are they accredited?

02:20:08 25 A. So we were primarily a diagnostic laboratory,

02:20:13 1 performing diagnostic testing on patient samples for
02:20:18 2 management of patients. And there's not really -- the
02:20:23 3 standard in the industry is -- is not -- I don't know that
02:20:26 4 it would be called accreditation, but it was certification
02:20:31 5 through the CLIAA, is what it was called, Clinical
02:20:35 6 Laboratory Improvement Amendments Act, but just commonly
02:20:40 7 known as CLIAA regulations. We complied with those for
02:20:46 8 all testing relating to human patients.

02:20:48 9 Q. But isn't it true, Doctor, that every other lab
02:20:53 10 for which accreditation was available, actually was
02:20:56 11 accredited, except for the drug lab?

02:20:58 12 A. We were working on accreditation for the food
02:21:03 13 laboratory, at the time of my departure from the
02:21:06 14 laboratory.

02:21:06 15 Q. But as far as the other labs, virtually every
02:21:09 16 other lab that had accreditation available to it was, in
02:21:12 17 fact, accredited.

02:21:14 18 A. I'm not sure if there might have been some
02:21:17 19 outliers, where we didn't -- so all the laboratories
02:21:20 20 performing tests on human patients were -- fell under
02:21:24 21 either the College of American Physicians cap
02:21:29 22 accreditation, and that was accreditation. The remainder
02:21:32 23 fell under the CLIAA regulations. And then we had a
02:21:37 24 handful of laboratories that were not specifically related
02:21:39 25 to human testing. And I'm not sure, for example, the

02:21:42 1 rabies laboratory, whether there isn't some sort of
02:21:45 2 national standard, but we did not have any rabies
02:21:49 3 laboratory accreditation.

02:21:51 4 Q. And what accreditation provides is a means for
02:21:55 5 continuous quality assurance and improvement, right?

02:22:02 6 MS. HERLIHY: Objection. Asked and answered.

02:22:03 7 THE COURT: No, he can have it.

02:22:05 8 BY MR. TUMPOSKY:

02:22:06 9 Q. Isn't that what it provides, among other things,
02:22:08 10 it provides a continuous -- a means for continuous quality
02:22:11 11 assurance and improvement, right?

02:22:12 12 A. It's a nice benchmark to have for your program.

02:22:15 13 Q. And you get to -- reviewed externally by an
02:22:20 14 independently accredited body, right?

02:22:20 15 A. Yes, that is an advantage.

02:22:21 16 Q. And it makes sure that -- the body makes sure
02:22:23 17 you're complying with best practices in the industry?

02:22:28 18 A. Yes.

02:22:28 19 Q. And it wasn't until -- you say you began working
02:22:39 20 on accreditation just at the time that you were leaving?

02:22:42 21 A. For the food laboratory. That's when the grant
02:22:46 22 funding was offered.

02:22:47 23 Q. For the food laboratory, excuse me. But in no
02:22:50 24 time were you actually working towards accreditation for the
02:22:55 25 drug lab.

02:22:55 1 A. No. We didn't have the funding for it.
02:22:58 2 Occasionally Julie would say, "Okay. Here's an element
02:23:01 3 that we could institute in anticipation of some day" --
02:23:05 4 it's always, I think, useful to see what the standards are
02:23:08 5 and to see if there are any steps that we can make in the
02:23:11 6 right direction, given the resources that we had
02:23:13 7 available.

02:23:15 8 Q. So I want to shift gears a little bit and talk to
02:23:19 9 you about the backlog at the lab. Now, you mentioned that
02:23:28 10 there were budgetary concerns that prevented you from doing
02:23:32 11 everything that you wanted to do?

02:23:34 12 A. Yes.

02:23:35 13 Q. Now, there was, essentially, a waiting list of
02:23:40 14 samples that needed to be tested, right?

02:23:42 15 A. Yes.

02:23:43 16 Q. And that waiting list was months?

02:23:47 17 A. Yes.

02:23:47 18 Q. And in fact, after the Supreme Court case in 2009,
02:23:53 19 fair to say that that waiting list became even longer?

02:23:55 20 A. That's my understanding.

02:23:57 21 Q. All right. And so this was not something that was
02:24:03 22 considered a good thing for the lab. Is that fair to say?

02:24:06 23 A. It is not a good thing.

02:24:08 24 Q. And why is that?

02:24:09 25 A. People are waiting on the tail-end for their

02:24:13 1 results.

02:24:14 2 Q. So I assume, then, that the lab was very
02:24:18 3 interested in ways of reducing this backlog.

02:24:22 4 A. Yes.

02:24:22 5 Q. But in 2009, there was some budget cuts.

02:24:31 6 A. Yes.

02:24:31 7 Q. In fact, the lab took, it was about 20 percent --
02:24:35 8 the drug lab took about a 20 percent reduction on its annual
02:24:40 9 budget?

02:24:40 10 MS. HERLIHY: Your Honor, I would just object
02:24:42 11 to the ongoing leading nature of the questions.

02:24:44 12 THE COURT: Well, that's a good objection.
02:24:47 13 This is a plaintiff's witness we called, but it's an adverse
02:24:52 14 party. Rule 611 applies in my discretion to allow leading
02:24:56 15 questions of an adverse witness. My preference would be to
02:25:00 16 conduct a generally direct questioning. However, that --
02:25:07 17 I'm going to significantly relax that, because this is an
02:25:10 18 adverse witness.

02:25:12 19 So let me just tell you, for the rest of this
02:25:15 20 examination, I would prefer that you ask traditional direct
02:25:20 21 questions, but I'm going to give you the latitude to lead.

02:25:23 22 MR. TUMPOSKY: Thank you, Your Honor.

02:25:24 23 BY MR. TUMPOSKY:

02:25:25 24 Q. What was the budget cutback for fiscal year 2009,
02:25:27 25 if you recall?

02:25:28 1 A. I think it might have been over a million
02:25:31 2 dollars.

02:25:31 3 Q. A million-dollar reduction?

02:25:34 4 A. I believe so. It was the largest reduction I
02:25:39 5 recall having seen.

02:25:41 6 Q. And this was in 2009?

02:25:43 7 A. We had to implement the cuts in 2009.

02:25:47 8 Q. And what month did you have to begin with the
02:25:53 9 money and the cuts? Would that be July of 2009?

02:25:56 10 A. I started in my role as acting director of the
02:26:02 11 Bureau of Laboratory Sciences at around July of 2009, so
02:26:10 12 it was -- I recall it being one of my first activities.

02:26:13 13 Q. Okay. So summer of 2009, fair to say?

02:26:17 14 A. Yes.

02:26:18 15 Q. And again, that was the same season, if you would,
02:26:22 16 where the Supreme Court case came down that changed the
02:26:26 17 rules dramatically, right?

02:26:27 18 A. As I understand, yes.

02:26:28 19 Q. And what was your understanding of --

02:26:28 20 THE COURT: Just so the jury stays on top of
02:26:31 21 that, that's the *Melendez-Diaz* case.

02:26:33 22 MR. TUMPOSKY: I was going to clarify that.
02:26:36 23 Thank you, Your Honor.

02:26:36 24 BY MR. TUMPOSKY:

02:26:36 25 Q. And what was your understanding of the effect that

02:26:38 1 the Supreme Court case had on the activities of chemists?

02:26:44 2 A. Because it required chemists to testify in
02:26:47 3 person at the cases, rather than simply submit a
02:26:50 4 certificate of analysis, it greatly reduced the amount of
02:26:54 5 time that the chemists were available in the lab to work
02:26:58 6 on testing itself.

02:27:01 7 Q. And between the decision and the budget cuts, what
02:27:02 8 happened to the backlog in the summer of 2009?

02:27:06 9 A. I don't know specifically.

02:27:09 10 Q. Do you have any reason to believe that it
02:27:14 11 decreased in that time period?

02:27:15 12 A. I don't have any reason to believe that it
02:27:17 13 decreased.

02:27:18 14 Q. Fair to say it probably went up?

02:27:20 15 A. I would not have been surprised.

02:27:22 16 Q. Now, what steps did you or Ms. Nassif take to
02:27:28 17 alleviate some of these budgetary concerns?

02:27:31 18 A. Julie had a number of ideas for how we could be
02:27:37 19 more efficient with the way that samples were allocated to
02:27:41 20 the various chemists. She had ideas that we also
02:27:47 21 implemented about how to make more efficient use of the
02:27:51 22 court day, if there are multiple calls for testimony in
02:27:57 23 different parts of the state. There were -- we had some
02:28:03 24 opportunities for overtime pay that helped, also, to
02:28:07 25 manage the backlog.

02:28:08 1 Q. Where did you get those opportunities?

02:28:10 2 A. I believe that it was -- some of it came from
02:28:15 3 grants, some of it may have come from unspent funds at the
02:28:21 4 end of the fiscal year. I'm not really sure.

02:28:23 5 Q. Are you familiar with the Coverdell grant?

02:28:26 6 A. Yes.

02:28:27 7 Q. And what is that?

02:28:29 8 A. It's a federal grant that was relative -- well,
02:28:35 9 I -- I have heard of it in that I associate it in my mind
02:28:41 10 with funds for overtime testing.

02:28:44 11 Q. And fair to say shortly after you were hired,
02:28:49 12 there was a push made to obtain some of this funding?

02:28:52 13 A. It may have also predated my arrival as the
02:28:57 14 bureau director.

02:28:59 15 Q. So -- but you know that the lab did receive grant
02:29:04 16 funding at some point?

02:29:05 17 A. Yes.

02:29:05 18 Q. And that they received it around -- they also
02:29:09 19 received some around the time that you came into the
02:29:14 20 position?

02:29:15 21 A. I remember seeing it as a line item on our
02:29:17 22 budgets.

02:29:17 23 Q. And how much was it?

02:29:18 24 A. I don't remember.

02:29:20 25 Q. Was it helpful?

02:29:22 1 A. Any bit was helpful.

02:29:27 2 Q. And what did it allow you to do?

02:29:27 3 A. I understand it was associated with the option
02:29:30 4 to have pay, the chemists, additional money for overtime.

02:29:36 5 Q. What about hiring extra chemists? Did you
02:29:41 6 understand that it allowed you to do that, as well?

02:29:44 7 A. I'm not sure. I'm -- I'm not sure.

02:29:46 8 Q. And what were the -- were there any requirements
02:29:49 9 for obtaining and maintaining this grant?

02:29:53 10 A. I'm not sure. There's usually reporting
02:29:57 11 requirements of some sort with grants.

02:29:58 12 Q. Are you familiar with the reporting requirements
02:30:01 13 for the Coverdell grant?

02:30:02 14 A. I've encountered them, yes.

02:30:05 15 Q. What are they?

02:30:06 16 A. I -- the context in which I've encountered them,
02:30:11 17 I actually have not read the requirements. I have not
02:30:15 18 actually completed any reports. I would -- Julie and her
02:30:21 19 group would do that. And if there were any issues or
02:30:24 20 questions, I could be consulted.

02:30:27 21 Q. So your testimony is that you're not personally
02:30:30 22 familiar with the requirements for the grant?

02:30:32 23 A. No.

02:30:33 24 Q. So I want to shift gears a little bit and talk to
02:30:44 25 you about when you first became aware of any problems with a

02:30:50 1 chemist by the name of Annie Dookhan. When did you first
02:31:00 2 become aware?

02:31:02 3 A. June 2011.

02:31:04 4 Q. Now, prior to that, had you been alerted to any
02:31:09 5 unusual activity in her -- in her production?

02:31:13 6 A. None.

02:31:14 7 Q. Were you aware of the -- her high testing volume
02:31:19 8 prior to June of 2011?

02:31:21 9 A. I understood her to be a highly productive
02:31:25 10 chemist.

02:31:26 11 Q. And when did you first reach that understanding?

02:31:28 12 A. It was sort of general knowledge. I didn't see
02:31:33 13 any quantitative -- well, actually, I did. So in -- I had
02:31:43 14 known about it, in general terms, for some time. I think
02:31:48 15 I learned about it specifically with actual numbers
02:31:53 16 somewhere around 2011.

02:31:54 17 Q. So you heard about it sometime prior to that, in a
02:32:00 18 general sense?

02:32:00 19 A. Yes.

02:32:01 20 Q. And who was it that informed you of this?

02:32:04 21 A. Most likely Julie and other of the division
02:32:10 22 directors.

02:32:11 23 Q. And you were -- by that, you're referring to
02:32:14 24 Defendant Salemi?

02:32:15 25 A. No. I was referring, actually, to -- for

02:32:18 1 example, the director of the Central Laboratory Services
02:32:22 2 division.

02:32:22 3 Q. Okay. But you believe Ms. Nassif might have
02:32:31 4 informed you?

02:32:31 5 A. Yes.

02:32:31 6 Q. And you're not sure when, but some time prior to
02:32:33 7 2011?

02:32:33 8 A. Yes.

02:32:34 9 Q. Did Ms. Nassif say to you that she received any
02:32:43 10 issues with this high volume?

02:32:47 11 A. There was a point where I asked for actual
02:32:53 12 numbers associated with the various chemists, and I noted
02:32:57 13 that Ms. Dookhan had high numbers. I asked Julie if this
02:33:04 14 was strange, and Julie said, "Well, there's all kinds of
02:33:09 15 considerations. You can't just take those numbers for
02:33:11 16 face value. You have to consider that a number of those
02:33:13 17 chemists were assigned to other non-bench duties; that
02:33:16 18 some specimens are more complicated than others and
02:33:20 19 involved more components; that some people were taking
02:33:24 20 advantage of the overtime pay to a greater extent than
02:33:27 21 others. Some people would go home after testifying at a
02:33:31 22 case, and others would come back after testifying and work
02:33:35 23 a few more hours." So that she said you can't necessarily
02:33:39 24 make any judgments on the face value of the volumes alone.

02:33:42 25 Q. But it's fair to say, Dr. Han, you were more

02:33:46 1 interested in the other chemists catching up to Ms. Dookhan
02:33:51 2 than you were in slowing her down?

02:33:53 3 MS. HERLIHY: Objection.

02:33:54 4 THE COURT: Overruled.

02:33:55 5 THE WITNESS: I understand -- there's a range
02:33:57 6 of capabilities. There are -- there's a range of
02:34:01 7 capabilities. Some people were higher, and some were lower.
02:34:05 8 BY MR. TUMPOSKY:

02:34:05 9 Q. Fair to say, then, that you were appreciative of
02:34:08 10 her efforts to clear the backlog?

02:34:10 11 A. I did not see anything negative associated with
02:34:13 12 her high volume of testing.

02:34:16 13 Q. Did it ever occur to you that that high volume
02:34:21 14 might result in mistakes being made or shortcuts being
02:34:24 15 taken?

02:34:25 16 A. No.

02:34:25 17 Q. And how long had Ms. Dookhan been working at the
02:34:34 18 lab when you first noticed her volume?

02:34:38 19 A. Oh, I -- she started -- I don't remember -- I
02:34:46 20 think she was at the lab starting in 2004, and I wasn't
02:34:50 21 involved in the chemistry group at the time. So I don't
02:34:54 22 know -- I never even knew who she was until I -- until I
02:34:57 23 had been with the department for several years, so I don't
02:35:03 24 know that I can judge.

02:35:05 25 Q. But you had chemists who had been doing testing

02:35:08 1 for 30 years, right?

02:35:09 2 A. As I have learned, recently.

02:35:11 3 Q. Mr. Lawler had been at the lab for how long?

02:35:15 4 A. I -- I heard his testimony as he was having --
02:35:18 5 as having been there for over 20 years, 30 possibly.

02:35:21 6 Q. And so she had a higher volume than people who had
02:35:24 7 been there 15 or 20 years longer than she had.

02:35:28 8 A. Which is -- Mr. Lawler had a lot of supervisory
02:35:36 9 responsibilities.

02:35:37 10 MR. TUMPOSKY: Thank you.

02:35:39 11 One moment, Your Honor.

02:35:47 12 (Discussion off the record.)

02:35:49 13 BY MR. TUMPOSKY:

02:35:52 14 Q. Isn't it true that Mr. Salemi, in fact, believed
02:35:56 15 that this high volume was an issue?

02:36:00 16 MS. HERLIHY: Objection as to what Mr. Salemi
02:36:02 17 believed.

02:36:03 18 THE COURT: Sustained.

02:36:05 19 Just rephrase.

02:36:06 20 BY MR. TUMPOSKY:

02:36:07 21 Q. Isn't it true that Mr. Salemi told you that he was
02:36:10 22 concerned about this high volume?

02:36:12 23 A. He did not.

02:36:13 24 Q. Isn't it true that Ms. Nassif told you that Salemi
02:36:19 25 was concerned about this high volume?

02:36:22 1 A. Can you repeat that?

02:36:25 2 Q. Isn't it true that Ms. Nassif -- excuse me.

02:36:28 3 Ms. Nassif informed you that Mr. Salemi was concerned about
02:36:31 4 the high volume?

02:36:33 5 A. I don't recall that.

02:36:34 6 Q. I want to now turn your attention to June of 2011.
02:37:11 7 Did something happen in the lab at that time?

02:37:14 8 A. Yes.

02:37:15 9 Q. And what was that?

02:37:16 10 A. In the drug lab. Julie brought to my attention
02:37:21 11 a concern related to Annie Dookhan.

02:37:25 12 Q. And what was that concern?

02:37:27 13 A. She conveyed that Annie had conducted testing on
02:37:37 14 a set of samples, without having checked those samples out
02:37:41 15 from the evidence office.

02:37:43 16 Q. Had she done anything else?

02:37:47 17 A. Annie had also -- in addition to having
02:37:52 18 conducted testing on samples without checking them out
02:37:55 19 first, she -- when she -- she -- it appeared that she
02:38:02 20 falsified the initials of an evidence officer in the
02:38:07 21 evidence logbook.

02:38:08 22 Q. To cover up for the fact that she had done
02:38:12 23 something improper?

02:38:13 24 A. That's what it appeared to be.

02:38:15 25 Q. Did you consider this to be a problem?

02:38:17 1

A. I did.

02:38:17 2

Q. What did you do about it?

02:38:24 3

02:38:30 4

A. In discussion with Julie, we immediately took her off of her testing role to eliminate the possibility of her having further issues with chain-of-custody documentation.

02:38:36 5

02:38:41 6

02:38:45 7

Q. And -- but she got another assignment within the lab, right?

02:38:51 8

02:38:52 9

A. Yes.

02:38:52 10

02:38:55 11

Q. And that assignment was to rewrite the policies from 2004?

02:38:57 12

A. Yes.

02:38:58 13

Q. The policies that she had just broken?

02:39:00 14

02:39:04 15

A. I'm not sure if those policies were related to evidence, chain of command, and processing of samples.

02:39:10 16

02:39:12 17

Q. Is it your testimony that the drug lab doesn't have policies on logging samples in and out of the safe?

02:39:16 18

02:39:18 19

A. My testimony is I'm not sure if the procedures that she was updating were of purely technical nature.

02:39:22 20

02:39:28 21

Q. You agree that she had just violated, flagrantly, lab policy, right?

02:39:29 22

A. She violated laboratory policy.

02:39:32 23

02:39:35 24

Q. And now she was being tasked with rewriting policies.

02:39:36 25

A. She was being tasked to rewrite laboratory

02:39:39 1 standard operating procedures.

02:39:41 2 Q. Which she had just ignored a few moments ago.

02:39:45 3 MR. MARINO: Objection. Asked and answered.

02:39:46 4 THE COURT: No, she can have it.

02:39:50 5 THE WITNESS: My understanding was that she
02:39:52 6 was revising standard operating procedures for various
02:39:55 7 technical procedures conducted in the laboratory.

02:39:58 8 BY MR. TUMPOSKY:

02:40:01 9 Q. And you, in fact, wanted to return her to testing
02:40:04 10 at some point?

02:40:05 11 A. Our plan was to take her off of testing. We had
02:40:11 12 no end point in mind. And in fact, over the following
02:40:15 13 nine-month period, there was no call -- nothing that
02:40:18 14 happened that would have made me comfortable with
02:40:21 15 returning her to the bench.

02:40:22 16 Q. But you, in fact -- isn't it true that you
02:40:27 17 believed that if she apologized and was contrite, that she
02:40:30 18 could go back to testing?

02:40:31 19 A. I don't believe that.

02:40:32 20 Q. That was not -- you don't believe that that's --
02:40:35 21 that that was your position?

02:40:36 22 A. I -- the plan was to take her off testing, let
02:40:43 23 the dust settle down on her personal issues, and see where
02:40:47 24 things landed.

02:41:10 25 Q. Do you remember speaking to the State Police?

02:41:12 1

A. I do.

02:41:14 2

Q. And do you remember speaking to the Department of Public Health about this case?

02:41:24 3

02:41:27 4

A. Yes.

02:41:28 5

02:41:45 6

Q. And isn't it true that you told the Department of Public Health that you would return Ms. Dookhan to testing if, in fact, she apologized?

02:41:52 7

02:41:56 8

A. There was no specific event that would have triggered her return. We didn't have such explicit detail in our thoughts when we took her off of the bench.

02:41:59 9

02:42:04 10

02:42:08 11

Q. Didn't you tell the Department of Public Health investigator that she was temporarily removed from testing duties?

02:42:12 12

02:42:15 13

02:42:15 14

A. She was -- she was removed for the time being, yes.

02:42:19 15

02:42:19 16

Q. With the intention of returning her at a later time.

02:42:22 17

02:42:23 18

A. In the event that there was something that would have changed, that would have prompted us to do that.

02:42:29 19

02:42:32 20

MR. TUMPOSKY: May I approach, Your Honor, the witness?

02:42:35 21

02:42:37 22

THE COURT: Yes.

02:42:42 23

(Discussion off the record.)

02:42:46 24

THE COURT: Can I see the parties, please?

02:44:41 25

(The following discussion held at the bench.)

02:44:41 1 THE COURT: All right. So this whole line of
02:44:45 2 questioning has been about what happened after 2011, after
02:44:49 3 Dookhan was let go. And now, clearly I had said in my trial
02:44:56 4 ruling, I'm going to let you get a little bit into that,
02:44:58 5 because I've already explained to them on the record why I
02:45:01 6 thought it was important for you to be able to explain a
02:45:04 7 little bit about what went on in the 2011 range. But I
02:45:14 8 think your about at the end of going there. We got to get
02:45:18 9 back to 2010 and what -- what this witness knew about 2010.

02:45:26 10 How much longer are we going to go on what she
02:45:29 11 knew?

02:45:29 12 MR. TUMPOSKY: Well, I think --

02:45:31 13 THE COURT: How long are you going to go
02:45:32 14 on -- do you want to go on about what she knew after the
02:45:37 15 Dookhan thing blew up in 2011 and she was taken off her
02:45:41 16 testing duties?

02:45:42 17 MR. TUMPOSKY: It was my intention to go
02:45:45 18 into -- I was going to put this statement in where she
02:45:49 19 swore -- she signed and swore to the statement -- or, excuse
02:45:53 20 me, to DPH, that there was a temporary removal and that
02:45:57 21 Dookhan would be put back on testing duties at some point in
02:46:01 22 time. It's my intention to do that.

02:46:04 23 It's then my intention to explore the fact that
02:46:07 24 there was no disclosures to law enforcement until February
02:46:09 25 of 2012 and that the letter disclosing it was, in fact,

02:46:13 1 untrue, which I believe deals with her credibility.

02:46:17 2 THE COURT: But what is a non-disclosure
02:46:20 3 through 2011/'12 have to do with non-disclosure relative to
02:46:25 4 your client's drug trial?

02:46:28 5 MR. TUMPOSKY: Again, I think it relates back
02:46:30 6 to the office custom of simply -- and again, the defendants
02:46:35 7 say, essentially, if they had known about problems, they
02:46:37 8 would have disclosed, and this rebuts that. Because they
02:46:40 9 knew about problems, and they didn't disclose. So I think
02:46:44 10 it undercuts their defense, and it's relevant to her
02:46:47 11 credibility, particularly to what she's saying, "I had no
02:46:50 12 intention of returning her to testing," and this proves
02:46:53 13 otherwise, and, "As soon as I found out about anything, I
02:46:56 14 disclosed," which is not true in terms of the time frame.
02:46:59 15 And the manner in which she disclosed, quite frankly, was
02:47:03 16 incredible. It was not believable. So that relates back to
02:47:06 17 just the believability of her testimony, is all.

02:47:09 18 MS. HERLIHY: Your Honor, if I may. With
02:47:10 19 respect to this witness, all he has with respect to this
02:47:18 20 particular witness, prior to June of 2011, she had a general
02:47:24 21 sense that Annie Dookhan was a good worker, a hard worker.
02:47:28 22 There's no evidence that this witness knew anything about
02:47:31 23 even increased numbers prior to 2011, well after the trial.

02:47:36 24 So again, continuing down this road, I agree with
02:47:40 25 Your Honor, it's not --

02:47:41 1

THE COURT: You're raising your hand?

02:47:45 2

MS. HEDGES: No, no. I was trying not to

02:47:47 3

fall down.

02:47:53 4

THE COURT: I think you've gotten all the

02:47:56 5

mileage here that I'm comfortable with giving you going

02:47:59 6

after this. I understand you're saying, look, their

02:48:02 7

behavior in 2011 and 2012 and what they failed to do and

02:48:07 8

didn't pay attention to is reflective on what the jury could

02:48:11 9

find they failed to do back in 2010. I understand that.

02:48:14 10

But I've let you explore that, and just kind of letting you

02:48:18 11

go and go and go on it I don't think is necessarily fair.

02:48:22 12

MR. TUMPOSKY: Well, I haven't really

02:48:23 13

explored the response of the defendants, quite frankly,

02:48:27 14

until about five minutes ago. I was trying to lay the

02:48:32 15

groundwork for that on previous testimony, but this is

02:48:35 16

really our first sort of foray into specifically how they

02:48:38 17

handled things as they came up in 2011. I don't think we

02:48:41 18

have explored that, actually, at all.

02:48:44 19

THE COURT: If you're -- I'm going to let you

02:48:46 20

go one or two questions more, but I'm starting to get

02:48:50 21

sensitive to this issue.

02:48:54 22

And -- and what I'm also sensitive to is defense

02:49:02 23

is getting into a little bit of a tough spot, because you're

02:49:06 24

making a good argument; they're not showing that she knew

02:49:08 25

anything. But an alternative theory, quite frankly, is what

02:49:11 1 they're showing is that this witness who should have had a
02:49:14 2 lot of information was just kind of blissfully, woefully
02:49:18 3 ignorant about what was going on, and that's a theory, as
02:49:21 4 well, that they could follow-up on.

02:49:24 5 MS. HERLIHY: You know, I actually don't
02:49:25 6 think that they've shown that. We have a director of a lab.
02:49:28 7 There are 18 labs in this building. She's director of all
02:49:31 8 of them. She's got no chemistry experience, she's not
02:49:36 9 blissfully unaware. You will hear that she met every week
02:49:40 10 with Julie Nassif and every lab director, that she asked
02:49:43 11 questions when information came to her attention.

02:49:45 12 THE COURT: I'll have to wait for you to
02:49:47 13 examine her to impress me on that one.

02:49:50 14 MS. HERLIHY: You are correct. But, yes,
02:49:52 15 again, I go back to the point that 2011 -- we're now in
02:49:55 16 June 2011. This is well after any *Brady* disclosure, which
02:49:58 17 is the theory of the case.

02:50:00 18 THE COURT: I agree with you, to me you put
02:50:04 19 that correctly.

02:50:06 20 MR. TUMPOSKY: Can I say one more thing?

02:50:08 21 THE COURT: I am going to give you a couple
02:50:10 22 more questions.

02:50:10 23 MR. TUMPOSKY: I want to just be clear on a
02:50:13 24 particular topic, because I would like to explore the letter
02:50:15 25 that she actually sent to the DAs, and that was her first

02:50:20 1 disclosure to law enforcement in 2012. And as the IG report
02:50:24 2 found, and I think I can show, essentially it was a
02:50:25 3 fabrication. They said, "Well, we did an investigation, and
02:50:28 4 our investigation revealed that the testing integrity wasn't
02:50:31 5 compromised," when, in fact, there was no investigation of
02:50:34 6 the testing integrity; that the chemist in question had a
02:50:38 7 blemish free personnel record, which, of course, is simply
02:50:42 8 inaccurate. And there was also an incident that was
02:50:46 9 discovered in May, similar to this, and it was not
02:50:51 10 disclosed. So the idea that --

02:50:54 11 THE COURT: But obviously none of this goes
02:50:56 12 to what could have been closed in 2010. This is all conduct
02:51:00 13 and other evidence that is, essentially, if you were
02:51:02 14 reversing the roles here, this is propensity evidence. Look
02:51:06 15 at what she did and didn't do all these years, so it allows
02:51:09 16 you to infer she did or didn't do in 2010; which, perhaps,
02:51:13 17 if you're showing that the method of operation and pattern
02:51:16 18 of conduct could be -- could be admissible.

02:51:19 19 MR. TUMPOSKY: That's --

02:51:20 20 THE COURT: And I'm letting you go there a
02:51:22 21 little. I'm just alerting the parties that you've got to
02:51:25 22 start focusing on 2010.

02:51:29 23 MR. TUMPOSKY: And I understand that, you
02:51:31 24 know, Your Honor has the gatekeeper function. I point out
02:51:34 25 there was no objection from the parties, quite frankly.

02:51:37 1

THE COURT: There was none.

02:51:38 2

02:51:40 3

MS. HERLIHY: Your Honor, we have objected, and you have been letting it in. We're trying to figure out where the line is as well, Your Honor.

02:51:44 4

02:51:45 5

THE COURT: Yeah. Yeah. Well, I'm going to keep you guessing.

02:51:47 6

02:51:48 7

MS. HERLIHY: We'll keep you guessing.

02:51:50 8

02:51:52 9

THE COURT: I really don't mind if you keep objecting. I don't want you to take any --

02:51:55 10

MR. MARINO: Why am I getting looked at?

02:51:58 11

02:52:02 12

THE COURT: I don't want you to take that to think I'm getting frustrated. I'm not.

02:52:04 13

02:52:06 14

MS. HERLIHY: We have been trying to find out where the line is in this particular issue.

02:52:07 15

02:52:10 16

THE COURT: Well, the line keeps moving, it really does, because the evidence keeps changing. So keep your objecting and keep advocating. All right.

02:52:13 17

02:52:28 18

(Bench conference concluded.)

02:52:28 19

BY MR. TUMPOSKY:

02:51:00 20

02:51:03 21

Q. Dr. Han, with regards to this incident in June, it's fair to say that you did not report it to law

02:51:06 22

enforcement any time in 2011? And by "law enforcement," I'm referring to prosecutors, defense lawyers, or police.

02:51:13 23

02:51:17 24

A. No, I did not.

02:51:18 25

Q. In fact, the first time you said anything to law

02:51:24 1 enforcement was February of 2012.

02:51:26 2 A. 2012, yes.

02:51:27 3 Q. And that was by meaning of a letter?

02:51:35 4 A. Yes.

02:51:40 5 MR. TUMPOSKY: May I approach this witness?

02:51:40 6 THE COURT: Yes.

02:51:51 7 BY MR. TUMPOSKY:

02:51:51 8 Q. Do you recognize this?

02:51:53 9 A. Yes.

02:51:58 10 Q. This is the letter -- the second letter that you
02:52:01 11 sent three weeks after the initial letter, right?

02:52:04 12 A. I'm not sure. What was the "initial letter"?

02:52:12 13 Q. I can show you that. That's not a problem.

02:52:14 14 A. Okay.

02:52:43 15 MR. TUMPOSKY: One moment, Your Honor.

02:53:34 16 I'm not putting my finger on it at the moment,
02:53:37 17 Your Honor.

02:53:34 18 BY MR. TUMPOSKY:

02:53:38 19 Q. But in any event, do you recall writing this
02:53:39 20 letter at the end of February of 2012?

02:53:40 21 A. I recall signing this letter.

02:53:42 22 Q. Okay. And this was where you detailed the result
02:53:45 23 of sort of the internal inquiry of what happened in June?

02:53:49 24 A. A number of those details are included, yes.

02:54:02 25 Q. And one of the details was, according to you, that

02:54:05 1 prior to this incident, the chemist involved had no
02:54:08 2 personnel issues and was well respected for the accuracy of
02:54:09 3 her work and --

02:54:09 4 MS. HERLIHY: Your Honor.

02:54:11 5 MR. TUMPOSKY: -- her dedication as a
02:54:13 6 laboratory technician?

02:54:13 7 THE COURT: Yes.

02:54:13 8 MS. HERLIHY: This is not an agreed-upon
02:54:15 9 exhibit. So he's reading directly from the exhibit. We'd
02:54:21 10 ask that it be admitted or not, before he reads from it.

02:54:22 11 THE COURT: Are you moving to admit that?

02:54:24 12 MR. TUMPOSKY: I would, Your Honor, yes.

02:54:25 13 MS. HERLIHY: Your Honor, we would object.
02:54:27 14 Again, we're in 2011, in a different county from the case at
02:54:30 15 issue, and discussing no conduct that predates the case at
02:54:33 16 issue.

02:54:34 17 THE COURT: All right. I'm not going to
02:54:35 18 allow the admission of that, the letter right now. You can
02:54:38 19 ask questions, summarizing in a general way questions. But
02:54:43 20 you cannot stand there next to the witness box and read the
02:54:47 21 letter. The witness has just read the letter, so you can
02:54:50 22 ask her questions about it.

02:54:54 23 BY MR. TUMPOSKY:

02:54:54 24 Q. It's fair to say, Dr. Han, that in that letter you
02:55:01 25 report to the DA -- the Norfolk DA that the chemist involved

02:55:04 1 in the June breach had no personnel issues and was well
02:55:08 2 respected for her work?

02:55:10 3 MS. HERLIHY: Again, Your Honor, it's quoting
02:55:12 4 from the letter.

02:55:12 5 THE COURT: I'm going to let it go. Go
02:55:15 6 ahead.

02:55:15 7 THE WITNESS: That's in this letter, correct.
02:55:17 8 BY MR. TUMPOSKY:

02:55:18 9 Q. That wasn't true.

02:55:19 10 A. I'm sorry. What was the question?

02:55:20 11 Q. That statement was incorrect, in other words, that
02:55:23 12 it was factually wrong.

02:55:24 13 A. I'm sorry, can you back up a question? I'm not
02:55:27 14 sure -- I think I missed --

02:55:28 15 Q. Sure. So you wrote a letter to the DA, indicating
02:55:31 16 that the chemist involved in the June breach was well
02:55:36 17 respected for her accuracy and had no prior issues. You
02:55:39 18 wrote that to the DA.

02:55:40 19 A. That is in this letter, yes.

02:55:42 20 Q. That statement was factually inaccurate.

02:55:47 21 A. I'm not sure I see where the inaccuracy is.

02:55:51 22 Q. So it's your position that that's an accurate
02:55:54 23 statement?

02:55:54 24 A. It is my position that it is accurate, right?

02:56:04 25 Q. Is that a question or --

02:56:07 1 A. What was your question?

02:56:07 2 BY MR. TUMPOSKY:

02:51:00 3 Q. Dr. Han, with regards to this incident in June,
02:51:03 4 it's fair to say that you did not report it to law
02:51:06 5 enforcement any time in 2011? And by "law enforcement," I'm
02:51:13 6 referring to prosecutors, defense lawyers, or police.

02:51:17 7 A. No, I did not.

02:51:18 8 Q. In fact, the first time you said anything to law
02:51:24 9 enforcement was February of 2012.

02:51:26 10 A. 2012, yes.

02:51:27 11 Q. And that was by meaning of a letter?

02:51:35 12 A. Yes.

02:51:40 13 MR. TUMPOSKY: May I approach this witness?

02:51:40 14 THE COURT: Yes.

02:51:51 15 BY MR. TUMPOSKY:

02:51:51 16 Q. Do you recognize this?

02:51:53 17 A. Yes.

02:51:58 18 Q. This is the letter -- the second letter that you
02:52:01 19 sent three weeks after the initial letter, right?

02:52:04 20 A. I'm not sure. What was the "initial letter"?

02:52:12 21 Q. I can show you that. That's not a problem.

02:52:14 22 A. Okay.

02:52:43 23 MR. TUMPOSKY: One moment, Your Honor.

02:53:34 24 I'm not putting my finger on it at the moment,

02:53:37 25 Your Honor.

02:53:34 1

BY MR. TUMPOSKY:

02:53:38 2

Q. But in any event, do you recall writing this letter at the end of February of 2012?

02:53:39 3

02:53:40 4

A. I recall signing this letter.

02:53:42 5

02:53:45 6

Q. Okay. And this was where you detailed the result of sort of the internal inquiry of what happened in June?

02:53:49 7

A. A number of those details are included, yes.

02:54:02 8

02:54:05 9

02:54:08 10

02:54:09 11

Q. And one of the details was, according to you, that prior to this incident, the chemist involved had no personnel issues and was well respected for the accuracy of her work and --

02:54:09 12

MS. HERLIHY: Your Honor.

02:54:11 13

02:54:13 14

MR. TUMPOSKY: -- her dedication as a laboratory technician?

02:54:13 15

THE COURT: Yes.

02:54:13 16

02:54:15 17

02:54:21 18

MS. HERLIHY: This is not an agreed-upon exhibit. So he's reading directly from the exhibit. We'd ask that it be admitted or not, before he reads from it.

02:54:22 19

THE COURT: Are you moving to admit that?

02:54:24 20

MR. TUMPOSKY: I would, Your Honor, yes.

02:54:25 21

02:54:27 22

02:54:30 23

02:54:33 24

MS. HERLIHY: Your Honor, we would object. Again, we're in 2011, in a different county from the case at issue, and discussing no conduct that predates the case at issue.

02:54:34 25

THE COURT: All right. I'm not going to

02:54:35 1 allow the admission of that, the letter right now. You can
02:54:38 2 ask questions, summarizing in a general way questions. But
02:54:43 3 you cannot stand there next to the witness box and read the
02:54:47 4 letter. The witness has just read the letter, so you can
02:54:50 5 ask her questions about it.

02:54:54 6 BY MR. TUMPOSKY:

02:54:54 7 Q. It's fair to say, Dr. Han, that in that letter you
02:55:01 8 report to the DA -- the Norfolk DA that the chemist involved
02:55:04 9 in the June breach had no personnel issues and was well
02:55:08 10 respected for her work?

02:55:10 11 MS. HERLIHY: Again, Your Honor, it's quoting
02:55:12 12 from the letter.

02:55:12 13 THE COURT: I'm going to let it go. Go
02:55:15 14 ahead.

02:55:15 15 THE WITNESS: That's in this letter, correct.

02:55:17 16 BY MR. TUMPOSKY:

02:55:18 17 Q. That wasn't true.

02:55:19 18 A. I'm sorry. What was the question?

02:55:20 19 Q. That statement was incorrect, in other words, that
02:55:23 20 it was factually wrong.

02:55:24 21 A. I'm sorry, can you back up a question? I'm not
02:55:27 22 sure -- I think I missed --

02:55:28 23 Q. Sure. So you wrote a letter to the DA, indicating
02:55:31 24 that the chemist involved in the June breach was well
02:55:36 25 respected for her accuracy and had no prior issues. You

02:55:39 1

wrote that to the DA.

02:55:40 2

A. That is in this letter, yes.

02:55:42 3

Q. That statement was factually inaccurate.

02:55:47 4

A. I'm not sure I see where the inaccuracy is.

02:55:51 5

Q. So it's your position that that's an accurate

02:55:54 6

statement?

02:55:54 7

A. It is my position that it is accurate, right?

02:56:04 8

Q. Is that a question or --

02:56:07 9

A. What was your question?

02:56:09 10

Q. Do you believe that statement to be accurate, that

02:56:11 11

she had no personnel issues and was well respected?

02:56:15 12

A. I believe that statement to be accurate.

02:56:17 13

Q. You also informed the DA that -- in this letter,

02:56:28 14

that there's no reason to suspect the integrity of any

02:56:33 15

samples had been affected; is that right?

02:56:36 16

A. That's correct.

02:56:36 17

MS. HERLIHY: Again, Your Honor, I would just
continue to object the reading in of the letter.

02:56:38 18

02:56:41 19

THE COURT: I understand.

02:56:41 20

That's the last question on the letter.

02:56:45 21

Go ahead.

02:56:46 22

THE WITNESS: That's correct.

02:56:46 23

BY MR. TUMPOSKY:

02:56:47 24

Q. But the lab had not actually investigated whether

02:56:51 25

the integrity of the samples had been affected by the

02:56:56 1 breach, correct?

02:56:57 2 A. In review of the incident, they did not
02:57:03 3 believe -- I did not have any reason to believe at the
02:57:06 4 time of the June incident that there was any concern with
02:57:09 5 the quality of the laboratory testing or the accuracy of
02:57:12 6 the results.

02:57:13 7 Q. But my question was, no one in the lab had
02:57:17 8 actually investigated whether there was any problems with
02:57:21 9 the samples, prior to you making that representation?

02:57:24 10 A. The Department of Public Health had done their
02:57:27 11 own internal investigation in December through January and
02:57:30 12 had arrived at that same conclusion.

02:57:35 13 Q. No one actually tested any of your samples at that
02:57:38 14 point?

02:57:38 15 A. I'm not sure.

02:57:50 16 MR. TUMPOSKY: Nothing further.

02:57:55 17 MS. HERLIHY: One moment, Your Honor.

02:58:08 18 Your Honor, as we discussed, we're going to just
02:58:11 19 briefly question Dr. Han now and intend to call her in our
02:58:15 20 case in chief.

02:58:16 21 THE COURT: Yes. I understand, now.

02:58:20 22 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT HAN**

02:58:20 23 BY MS. HERLIHY:

02:58:21 24 Q. Dr. Han, Mr. Tumposky asked you some questions
02:58:26 25 about accreditation. Do you recall testifying about those

02:58:26 1 issues?

02:58:26 2 A. Yes.

02:58:26 3 Q. And he talked about the cost of accreditation, and
02:58:30 4 you said that when you were the director of the Bureau of
02:58:33 5 Laboratory Sciences, the food lab was going through
02:58:35 6 accreditation, correct?

02:58:37 7 A. It was just initiating the process when I left.

02:58:40 8 Q. And do you recall the size of the grant that was
02:58:43 9 necessary to engage in that accreditation process for the
02:58:47 10 food lab?

02:58:48 11 A. I recall it was a grant that covered three
02:58:53 12 years' worth of activities. And at least for one of the
02:58:56 13 years, there was more than a million dollars allocated for
02:58:59 14 that activity.

02:59:01 15 Q. Do you have experience taking labs or other
02:59:04 16 organizations through an accreditation process?

02:59:09 17 A. No.

02:59:18 18 Q. Have you worked in a lab as it's gone through an
02:59:21 19 accreditation process?

02:59:23 20 A. No.

02:59:28 21 Q. How far did the food lab get in it's accreditation
02:59:35 22 process while you were the director of the Bureau of
02:59:40 23 Laboratory Sciences?

02:59:41 24 A. I believe we were awarded the grant shortly
02:59:46 25 after my departure, so I was involved in all of the

02:59:52 1 application activities.

02:59:52 2 Q. And it was expected to be a multiyear process?

02:59:54 3 A. Multiyear process, involving the hire of
02:59:58 4 additional personnel to support the infrastructure and
03:00:03 5 requirements of accreditation.

03:00:04 6 Q. And at least a million dollars?

03:00:05 7 A. Yes.

03:00:06 8 Q. Mr. Tumposky asked you, with respect to
03:00:15 9 information that you received mid 2011 regarding the volume
03:00:19 10 of the tests that were being done by Ms. Dookhan, he asked
03:00:22 11 you whether you had any reason to believe that there were
03:00:26 12 any mistakes or shortcuts -- that she was making any
03:00:29 13 mistakes or shortcuts to achieve those numbers. And you
03:00:34 14 testified, no, that you had no basis.

03:00:35 15 Do you recall that testimony?

03:00:35 16 A. I recall that testimony.

03:00:37 17 Q. And why do you say that you had no basis to
03:00:40 18 believe that there were no mistakes or shortcuts?

03:00:43 19 A. I -- so in part because of Julie's explanation
03:00:49 20 that test volume data needs to be interpreted with
03:00:52 21 caution, with consideration of a number of other factors
03:00:55 22 that could impact test volumes, and partly because
03:01:05 23 supervisors in the laboratory area were so confident in
03:01:10 24 the quality of her tests.

03:01:11 25 Q. Mr. Tumposky asked you about speaking to state

03:01:17 1 police. Do you recall that?

03:01:17 2 A. I do.

03:01:17 3 Q. Did you ever sign a statement for the state
03:01:19 4 police?

03:01:19 5 A. No.

03:01:20 6 Q. Were you ever given an opportunity to review notes
03:01:24 7 taken by the State Police?

03:01:25 8 A. No.

03:01:28 9 MS. HERLIHY: Nothing further.

03:01:33 10 MR. MARINO: No questions, Your Honor.

03:01:36 11 MR. GRACE: No questions.

03:01:40 12 THE COURT: Any redirect?

03:01:42 13 MR. TUMPOSKY: Can I have one moment, Your
03:01:44 14 Honor?

03:01:45 15 (Discussion off the record.)

03:02:07 16 MR. TUMPOSKY: Could we briefly approach
03:02:09 17 sidebar.

03:02:10 18 THE COURT: All right.

03:02:25 19 (The following discussion held at the bench.)

03:04:08 20 MR. TUMPOSKY: Your Honor, given the sort of
03:04:11 21 limitations on the form of the question, at this point I
03:04:15 22 think we would elect to rest, quite frankly, and then allow
03:04:19 23 the defendants to begin to present their case. And we will
03:04:25 24 deal with the other parties here during cross.

03:04:28 25 THE COURT: Okay. Well, that's your

03:04:29 1 prerogative. What do you mean by in light of the limitation
03:04:32 2 of the questions?

03:04:33 3 MR. TUMPOSKY: Well, I think there was some
03:04:35 4 restrictions on our ability to phrase cross-examination
03:04:39 5 style. And you're saying you gave us some leeway, but
03:04:41 6 that's the reason.

03:04:42 7 THE COURT: I don't accept that what the
03:04:48 8 Court did or any ruling was to the extent of changing how
03:04:53 9 you want to put your case on. I think I've -- I think I've
03:04:56 10 been abundantly fair with what -- what I let you do. And I
03:05:04 11 don't think it's -- I don't think it would be accurate for
03:05:06 12 you to be creating a situation where you're suggesting the
03:05:09 13 Court has interfered or limited your questioning.

03:05:13 14 You -- Ms. Han's was put on the witness stand, and
03:05:18 15 you asked her as much as what you could get out of her about
03:05:21 16 the 2010 time period. And I let you ask a good number of
03:05:26 17 questions about 2011 and beyond. And then even after I
03:05:32 18 brought you to sidebar and told you that I was getting
03:05:35 19 concerned, I let you ask a couple more questions over
03:05:38 20 objection.

03:05:39 21 So I -- I want to make it clear -- perhaps an
03:05:45 22 independent person reviewing the record may have a different
03:05:49 23 opinion, but I want to make it clear that I think the Court
03:05:53 24 has been abundantly fair and been operating in a way that
03:05:59 25 would not act as a restriction to you in calling witnesses.

03:06:06 1 So it's absolutely your choice who you want to put
03:06:09 2 on and what you want to do, but that's a tactical decision,
03:06:15 3 as I view it, not a decision being put upon you by my
03:06:19 4 rulings.

03:06:19 5 MR. TUMPOSKY: Well, we would rest, Your
03:06:21 6 Honor.

03:06:21 7 THE COURT: All right.

03:06:27 8 MS. HEDGES: Could we just have one moment?

03:06:30 9 THE COURT: Yeah.

03:06:31 10 (Discussion off the record.)

03:07:51 11 MR. TUMPOSKY: And I apologize, Your Honor, I
03:07:53 12 wasn't intending to be critical. I understand the Court has
03:07:56 13 been fair.

03:07:57 14 THE COURT: No, no, no, I wasn't looking for
03:07:59 15 you to apologize. You know, I'm sensitive only to
03:08:06 16 interfering, as a Court, in your tactical considerations.
03:08:10 17 And you might think I have acted as an interference, but I
03:08:15 18 wanted just to be clear, if this is ever reviewed, kind of
03:08:21 19 how we've operated here. And I -- I just don't think that
03:08:28 20 the -- that the Court limited you in any significant way.
03:08:32 21 For tactical reasons you chose not to call a witness, then
03:08:36 22 so be it. But no need to apologize. All right?

03:08:41 23 MR. TUMPOSKY: All right. Well, we will
03:08:43 24 rest.

03:08:43 25 THE COURT: Okay. All right.

03:08:44 1 MR. KELLY: Your Honor, since we're here,
03:08:47 2 from a scheduling perspective, obviously there are a couple
03:08:52 3 of things that we would like to do before we call our first
03:08:56 4 witness. I mean, we would like to address the court outside
03:08:59 5 the presence of the jury on a directed verdict motion. And
03:09:04 6 obviously we did reserve a little time for a brief opening.
03:09:08 7 We need to just confer. And it may well be that if we could
03:09:12 8 take 15 minutes to argue a motion to the Court, and then
03:09:15 9 perhaps do a defense opening, I don't know that we're
03:09:20 10 prepared to put a witness on, but we may be able to put a
03:09:23 11 witness on to begin his or her direct starting this
03:09:26 12 afternoon. I know you want to maximize the time.

03:09:28 13 THE COURT: All right. We'll take a lit --
03:09:30 14 so you want a break right now for --

03:09:33 15 MR. KELLY: Give us 15 minutes just to
03:09:35 16 collect our thoughts.

03:09:36 17 THE COURT: Just to collect your thoughts.
03:09:36 18 All right.

03:09:38 19 All right. And do you want to address me on any
03:09:40 20 issue before you start the defense case.

03:09:42 21 MR. KELLY: Yes, Your Honor.

03:09:43 22 MR. GRACE: Yes.

03:09:44 23 THE COURT: So I'll be back out in ten
03:09:46 24 minutes. All right?

03:09:48 25 MR. KELLY: Thanks.

03:09:50 1 THE COURT: All right. And you're going to
03:09:52 2 announce to the --

03:09:55 3 Well, there they go. They left us.

03:09:58 4 MR. MARINO: Are we not leaving?

03:10:01 5 MR. TUMPOSKY: You could be the proxy.

03:10:03 6 THE COURT: So I'm just going to announce to
03:10:05 7 the jury that the plaintiff plans on resting their case, and
03:10:08 8 this will be a break. We're going to take a ten-minute
03:10:10 9 break.

03:10:19 10 MR. TUMPOSKY: Yes.

03:10:20 11 MR. MARINO: Thank you, Your Honor.

03:10:24 12 (Bench conference concluded.)

03:08:46 13 THE COURT: All right. Ma'am, you may step
03:08:47 14 down.

03:08:50 15 All right. Ladies and gentlemen, at this point,
03:08:52 16 plaintiff's counsel has advised me they will likely be
03:08:58 17 resting their case. That means their case and their calling
03:09:03 18 witnesses, that portion of the trial will have been
03:09:05 19 completed.

03:09:06 20 There will be a switch now to where the defense
03:09:10 21 can choose to, if they want, to put on certain evidence and
03:09:16 22 begin the defense case. So it's a significant break in the
03:09:22 23 trial. So to kind of prepare for that shifting, we're going
03:09:24 24 to take about ten minutes. It will be an afternoon break
03:09:27 25 for the defense to get their things together and get ready

03:09:30 1 to start their case.

03:09:31 2 All right. During this break, don't discuss the
03:09:33 3 case, begin deliberations, research the case in any way, or
03:09:37 4 try to access it through one of your Internet, social media
03:09:42 5 searches. All right?

03:09:44 6 (The jury exits the courtroom.)

03:10:14 7 MR. TUMPOSKY: And just very, very quickly.
03:10:16 8 I understand that we aren't going to call any more
03:10:18 9 witnesses, but we hope to reserve on whatever the IG report,
03:10:22 10 whenever that is going to come in, would also be included in
03:10:26 11 our case.

03:10:26 12 THE COURT: Yes. Absolutely. You have
03:10:29 13 reserved on wherever -- whenever we get to deal with it.
03:10:34 14 But there will be -- at some point, we will deal with the
03:10:37 15 admissibility, and if admissible at all, what parts. And
03:10:42 16 that obviously I would let you -- I'm not even sure if it
03:10:46 17 would be considered as a reopening of your case or just a
03:10:49 18 continuation of your case, but yes, if we get to the point
03:10:52 19 where parts of the IG report are admissible, you will be
03:10:55 20 allowed to put them in. It will be considered to be put in
03:10:59 21 in the plaintiff's case.

03:11:00 22 MR. TUMPOSKY: Thank you, Your Honor.

03:11:01 23 THE COURT: All right.

03:11:06 24 THE DEPUTY CLERK: All rise.

03:11:09 1

(Court in recess at 3:11 p.m.

03:34:01 2

and reconvened at 3:34 p.m.)

03:34:01 3

THE COURT: All right. Where do we stand?

03:34:03 4

MOTION FOR DIRECTED VERDICT

03:34:03 5

MR. KELLY: Your Honor, if I could briefly

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address the Court. At this time -- and I won't make any

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extended argument, given the time of day and what we're

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trying to accomplish here in terms of schedule. But on

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behalf of all three defendants, I would like to move for a

03:34:22 10

directed verdict at this time, Your Honor. And if I could

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just briefly be heard as to the reasons.

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THE COURT: All right. Go ahead.

03:34:28 13

MR. KELLY: Really, two principal grounds for

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the motion, Your Honor: First, that there has not been an

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adequate showing of causation to establish a claim of

03:34:40 16

supervisory liability under 42 United States Code

03:34:45 17

Section 1983.

03:34:45 18

The law on that point, Your Honor, which is

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captured in the requested instructions that we've submitted,

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is that effectively plaintiff has to establish four things:

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That the behavior of the subordinate to the supervisor

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caused the constitutional violation, that there was a strong

03:35:06 23

causal connection between the supervisor's conduct and the

03:35:09 24

constitutional deprivation; third, that the supervisor had

03:35:13 25

knowledge of the unconstitutional condition that led to the

03:35:15 1 plaintiff's claim; and finally, that the supervisor was
03:35:17 2 deliberately indifferent, that is, that the supervisor had
03:35:23 3 knowledge of facts from which the supervisor could draw the
03:35:25 4 inference that a substantial risk of serious harm existed.

03:35:30 5 You know, Your Honor, it's our position that the
03:35:32 6 only facts which have been adduced at this point by the
03:35:38 7 plaintiff, relative to the time of trial here, which was
03:35:41 8 September of 2010, and giving the plaintiff the benefit of
03:35:48 9 the doubt, I think fall into three categories: One, there
03:35:51 10 is the high volume of testing by Ms. Dookhan; two, there was
03:35:56 11 some testimony about her appearance before a microscope.

03:36:01 12 And I think on direct examination, Mr. Piro
03:36:04 13 testified that he never saw her sitting in front of a
03:36:07 14 microscope; however, on cross-examination, it was clarified
03:36:10 15 that Mr. Piro was only in the same laboratory space as
03:36:16 16 Ms. Dookhan for an hour a day and only during a limited time
03:36:20 17 frame. And so the broad statement that he never saw her in
03:36:23 18 front of a microscope doesn't establish knowledge that she
03:36:28 19 was not engaged in any testing.

03:36:31 20 And the third, I think, point factually has to do
03:36:34 21 with the returns and Mr. Piro recognizing that there were a
03:36:40 22 number of returns from Ms. Dookhan. But in his testimony,
03:36:50 23 he explained that returns don't actually affect the
03:36:56 24 reliability of the conclusion regarding the actual substance
03:37:02 25 itself. And he explained that there are a number of reasons

03:37:04 1 why returns are made, and it's ultimately to get it right.
03:37:09 2 And it didn't mean that she simply either wasn't doing the
03:37:13 3 testing or was doing it improperly such that she was getting
03:37:18 4 the wrong result.

03:37:20 5 The point is that I don't believe that the
03:37:23 6 plaintiff has established some of the essential elements to
03:37:26 7 prove supervisory liability under 1983. Number one, I don't
03:37:31 8 think there is a constitutional violation. I don't believe
03:37:33 9 there is a *Brady* violation, based upon these facts, at that
03:37:38 10 point in time, at September 2010.

03:37:43 11 The real question is, did the defendants have
03:37:49 12 knowledge of material impeachment evidence regarding
03:37:55 13 Ms. Dookhan, and did they fail to disclose that evidence,
03:38:02 14 such that it violated the constitutional rights of
03:38:08 15 Mr. Jones. And Your Honor, I don't believe that there has
03:38:10 16 been an adequate showing that there was material impeachment
03:38:14 17 evidence.

03:38:14 18 Typically, when you're talking about that
03:38:17 19 standard, Your Honor, you're talking about either
03:38:20 20 exculpatory evidence, which goes to show that a defendant is
03:38:26 21 not guilty of a crime, or you're talking about the
03:38:31 22 presentation of fabricated evidence that supports a
03:38:35 23 conviction. It can also be material impeachment evidence,
03:38:39 24 if it's the central witness in the case. And the
03:38:43 25 impeachment of that witness would undermine the basis of the

03:38:47 1 conviction. However you look at exculpatory data, material
03:38:52 2 impeachment material, it has not been demonstrated here,
03:38:56 3 Your Honor. And so therefore, my first argument --

03:38:59 4 And I'll move to the second argument now, Your
03:39:02 5 Honor, is that there has not been an adequate showing of
03:39:05 6 causation to establish supervisory liability in this case,
03:39:07 7 based on the evidence presented.

03:39:10 8 Second basis of the motion, Your Honor, is that
03:39:13 9 each of the three defendants is entitled to qualified
03:39:15 10 immunity, based on the record as it presently stands. And
03:39:21 11 Your Honor, the law in this area is that there are -- a
03:39:29 12 two-step test that the courts follow to determine whether or
03:39:32 13 not state actors, state officers are entitled to qualified
03:39:35 14 immunity:

03:39:37 15 First, whether the claimant, Mr. Jones here, has
03:39:40 16 alleged a deprivation of a constitutional right. Clearly he
03:39:43 17 has made such an allegation. And second, whether that right
03:39:46 18 was clearly established at the time of the alleged action or
03:39:51 19 inaction, such that an objectively reasonable official would
03:39:57 20 have understood that his actions violated that clearly
03:40:00 21 established right.

03:40:01 22 And Your Honor, early on in this case, we moved to
03:40:06 23 dismiss the complaint of Mr. Jones, alleging qualified
03:40:13 24 immunity. And Judge Saylor, who was the first assigned
03:40:18 25 judge in the matter, denied the motion for qualified

immunity, but he did so based upon the allegations of the complaint. And he -- he actually entered a ruling, which is now reported, Your Honor, at 993 F.Supp.2d at page 57.

And what he found in that was that based upon what had been alleged in the complaint -- and he pointed out a few things. One, he pointed out the high volume of testing. Two, he pointed out that there was an allegation that Ms. Dookhan had forged quality control tests. And third, he pointed out that there was an allegation that the supervisors had ignored the fact that she had circulated different copies of her resume.

Now, at that stage of the proceedings, when the plaintiff is entitled to all benefit of the doubt, the judge had to accept those allegations as true. And on that basis, he denied the motion, finding that, you know, a chemist -- if those facts were true, that a chemist, as an extension of a prosecutor, as part of a prosecution team, would have some duty. And so he found that there would be a clearly established right.

But Your Honor, the facts have not been shown. Yes, the volume of testing is an issue here, Your Honor. But pre-September of 2010, there is no evidence of forged quality controlled tests. And the allegations regarding the CVs or resumes postdated September of 2010.

I submit that had Judge Saylor been aware at the

03:42:00 1 time that all that existed as of that point in time was the
03:42:03 2 high volume of testing, and particularly if he had the
03:42:05 3 benefit of knowing some of the explanations that we've heard
03:42:08 4 about why testing volumes and numbers vary from time to
03:42:13 5 time, that he may have come down in a different way.

03:42:19 6 But Your Honor, I would suggest that, first of
03:42:22 7 all, is this right clearly established? I mean, certainly
03:42:27 8 prosecutors and police officers and law enforcement
03:42:29 9 officials have this obligation. The law is simply evolving
03:42:32 10 here as to whether or not forensic scientists are required
03:42:36 11 under the law.

03:42:39 12 I'm submitting that Judge Saylor found that they
03:42:41 13 were. And I have great respect for Judge Saylor, and I
03:42:45 14 don't challenge his decision. But the underpinning of it is
03:42:48 15 a factual finding which frankly has not been made.

03:42:51 16 And based on the factual finding that has been
03:42:53 17 established here, Your Honor, we would submit that as a
03:42:57 18 second basis for our motion for directed verdict, that each
03:42:59 19 of these three defendants is entitled to qualified immunity.

03:43:03 20 THE COURT: All right. Before you start,
03:43:06 21 before you respond, I do find that the obligation to turn
03:43:15 22 over exculpatory information does extend to these
03:43:22 23 individuals, which include, at the state police lab,
03:43:28 24 employees and officials as an arm, essentially, of the
03:43:34 25 prosecution, under *Brady* generally. And so it does extend

03:43:41 1 to them in my view, consistent with Judge Saylor's finding,
03:43:47 2 quite frankly, for many, if not all, of the reasons and
03:43:51 3 rationale Judge Saylor talked about, that you noted.

03:43:56 4 Also, in this case, as to your question of whether
03:44:02 5 or not there really was a constitutional violation, at this
03:44:07 6 time, in the light most favorable to the plaintiff, we are
03:44:11 7 talking about the withholding, perhaps, of
03:44:19 8 impeachment-related evidence, at the one end of what would
03:44:24 9 be useful, to just flat out exculpatory this-test-was-bad
03:44:32 10 information on the other end of the spectrum.

03:44:34 11 But I think impeachment information showing that
03:44:40 12 your job performance is suspect because of a volume of your
03:44:52 13 testing, which in the eyes of supervisors would have called
03:45:00 14 into question how the testing can be done accurately, with
03:45:04 15 any amount of accuracy given that volume, to the extent that
03:45:10 16 it even got to the level of having to go -- supervisors even
03:45:16 17 talking about it, being made aware of the volume, it was a
03:45:21 18 concern, that that would be impeachment material falling
03:45:29 19 under the umbrella of exculpatory evidence for purposes of
03:45:33 20 satisfying a constitutional violation.

03:45:37 21 And that was your first argument. I'm just kind
03:45:39 22 of addressing your first argument of what I'm finding and
03:45:43 23 not accepting that argument.

03:45:50 24 So I've addressed that, the constitutional
03:45:52 25 violation, and I've addressed your final argument of -- of

03:45:58 1 the obligation to turn over *Brady*-type material does extend
03:46:04 2 to a state police -- or not a state police, a state employee
03:46:08 3 in the drug lab situation, like we have here. It does
03:46:12 4 extend to them. So I've addressed those.

03:46:14 5 Now, you -- your qualified immunity argument, I
03:46:26 6 think, is a little bit of a different argument, in the sense
03:46:32 7 that I'm certainly considering what you said. Do you have a
03:46:39 8 more -- a more specific argument to articulate, relative to
03:46:46 9 each defendant?

03:46:48 10 They are looked at -- in my mind, I'm looking at
03:46:52 11 all three of them differently right now, because, frankly,
03:46:56 12 there was different amounts of evidence relative to each of
03:46:59 13 them. So now's your opportunity to single out any one that
03:47:04 14 you think stands in a better position at this point than the
03:47:08 15 others.

03:47:10 16 MR. KELLY: I obviously represent Dr. Linda
03:47:12 17 Han, along with Ms. Herlihy, and I think we have heard far
03:47:19 18 less evidence as to the level of knowledge or involvement of
03:47:23 19 Dr. Linda Han than we have, obviously, of the other two
03:47:27 20 defendants. I mean, I think with respect to my client --
03:47:31 21 and I'll allow co-counsel to speak on behalf of their own
03:47:36 22 clients -- you know, again, my client was placed into this
03:47:42 23 role, and it -- it will be part of the upcoming evidence if
03:47:49 24 we get there, Your Honor. You will hear that she accepted
03:47:52 25 this role reluctantly. She inherited issues --

03:47:56 1 THE COURT: I don't want to hear what I'm
03:47:57 2 going to hear about it.

03:47:58 3 MR. KELLY: Okay. Then I won't. Based upon
03:48:01 4 what has been known, she has clearly testified that, you
03:48:04 5 know, she had only a general understanding of a high
03:48:08 6 productive employee. Until June of 2011, Dr. Linda Han had
03:48:18 7 no knowledge of any serious problem with this employee at
03:48:22 8 the lab. And once she became aware of it, she conferred
03:48:26 9 with the other supervisory officials. They removed this
03:48:29 10 woman from testing. They took action.

03:48:32 11 Prior to that time, which, of course, we're
03:48:34 12 talking about the snapshot in time -- we're talking about in
03:48:39 13 trial in September of 2010, all that Dr. Linda Han knew was
03:48:43 14 that there was a productive employee. And when she spoke
03:48:45 15 with Ms. Nassif about it, as she testified, she was told
03:48:49 16 that there were lots of reasons why you can't just accept
03:48:52 17 the bare numbers on the pages, as she testified. So I would
03:48:54 18 think with respect to Dr. Linda Han in particular, the
03:48:58 19 qualified immunity doctrine should apply.

03:49:01 20 THE COURT: So the analysis would be -- and
03:49:03 21 tell me if you think my analysis is articulated correctly;
03:49:07 22 that in this factual context, what we've heard at this
03:49:11 23 point, viewing it in light most favorable to the plaintiff,
03:49:18 24 considering what Han knew, if it would be reasonable for her
03:49:23 25 to understand that her conduct was violating a

03:49:27 1 constitutional right.

03:49:32 2 MR. KELLY: I do think that's the right
03:49:34 3 analysis, Your Honor.

03:49:35 4 And have in mind, Dr. Linda Han is not a forensic
03:49:41 5 chemist. She's not someone who tests drugs --

03:49:44 6 THE COURT: But I wasn't asking you to
03:49:45 7 supplement the argument.

03:49:47 8 MR. KELLY: Oh. I agreed with the analysis.
03:49:47 9 I thought you were calling for more, Your Honor. I
03:49:50 10 apologize.

03:49:51 11 THE COURT: I'm just asking you, that's
03:49:52 12 pretty much the framework test here of the meshing of
03:49:55 13 qualified immunity at a Rule 50 stage.

03:50:00 14 MR. KELLY: Yes, Your Honor. I'm in
03:50:05 15 agreement.

03:50:06 16 THE COURT: All right. I will -- I will
03:50:09 17 allow other counsels -- counsels for the other parties to
03:50:16 18 make a point.

03:50:17 19 MR. MARINO: Thank you, Your Honor. Paul
03:50:19 20 Marino, and I represent Ms. Nassif.

03:50:21 21 And taking that same rationale that you just spoke
03:50:25 22 of regarding Dr. Han, what did Ms. Nassif know or reasonably
03:50:29 23 knew, what she knew that she would be violating some
03:50:32 24 constitutional right.

03:50:33 25 And again, I think as the testimony has come in,

as far as what Ms. Nassif was told, what all the other witnesses have testified, was that there was one concern of high testing. It was reported to her, she met with supervisors. They did what they said they were going to do. That's it as of 2010.

And that's -- at the end of 2010, when that information comes to her, I don't see -- and I've heard no evidence, and I don't think there's been any evidence regarding any constitutional violation there or that she would be violating anyone's constitutional rights by acting in her role as the supervisor here to simply say, "Here's what we're going to do. We're going to address this issue." And what was reported back to her was exactly that. "We don't find" -- from her supervisors that report to her, "We don't find anything wrong here."

That's her job. And she then puts it up the chain of command, so Dr. Han was aware of it, as well, which was her role. I don't see how that -- or there can be any reasonable knowledge there that she's violating a constitutional right of Mr. Jones by acting in her role as a supervisor.

THE COURT: All right. For Mr. Salemi?

MR. GRACE: Yes. Likewise, Your Honor. As of September 1, 2010, Your Honor, the only concern was a vague concern about higher numbers than the other chemists.

03:51:55 1 It was addressed. And it was certainly not sufficient to
03:52:00 2 lead Mr. Salemi to reasonably believe that he was violating
03:52:04 3 any well-established right of Mr. Jones.

03:52:07 4 THE COURT: All right. So clearly I want to
03:52:10 5 hear from the plaintiff, but I'm also kind of factoring in
03:52:19 6 that I need -- we need a resolution of the Inspector General
03:52:25 7 report and what may or may not -- depending on how we
03:52:28 8 resolve this, what may be admissible in the plaintiff's
03:52:31 9 case, to factor into this analysis.

03:52:34 10 So I'll hear you now, your argument, up to this
03:52:38 11 point. And tomorrow morning is when we're going to have to
03:52:43 12 decide what, if any of the Inspector General's, report comes
03:52:46 13 in. And then we'll just supplement the arguments on the
03:52:50 14 Rule 50 motion at that point. All right?

03:52:55 15 MR. TUMPOSKY: Yes, Your Honor.

03:52:55 16 THE COURT: Does that sound --

03:52:57 17 MR. TUMPOSKY: Well, I would suggest, if the
03:52:59 18 Court was inclined to deny all the motions, then the IG
03:53:02 19 issue could come in and be done with, if necessary, if the
03:53:07 20 case ever went up to the First Circuit.

03:53:09 21 THE COURT: All right. So the defense has my
03:53:11 22 attention. How's that?

03:53:14 23 MR. TUMPOSKY: So I guess I -- I'll talk
03:53:16 24 generally about the evidence that we've heard, and then I'll
03:53:20 25 try and apply it to specific people, as best that I can.

03:53:24 1

THE COURT: Sure.

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MR. TUMPOSKY: You know, the main refrain that -- from the defense has been, "All we ever heard about was high volume." I would say two things about that:

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Number one, it's not true; and number two, it wasn't just that her numbers were better than everyone else's.

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You heard from Mr. Lawler that when he saw her numbers, he was floored. He actually said, "I don't believe that anyone could possibly be performing this amount of testing."

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And so I would suggest that a reasonable supervisor, looking at those numbers, would not just say, "Huh. That's interesting. She's productive. You know, maybe other people should skip lunch"; that they, the jury could infer, would be similarly floored, or should have been, that her numbers were so high, compared to all the other chemists, and infer from that, that she simply wasn't performing all the required tests.

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That alone, I would suggest, is *Brady* material, and that alone would be sufficient to require a state employee -- would put a reasonable state employee on notice. That's something that would be impeachment material.

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But that's not all we have.

THE COURT: Okay. So I agree with you with that being on impeachment material, that being potentially

03:54:47 1 exculpatory, that being a potential constitutional
03:54:50 2 violation, if you don't give it over. So I agree with that.

03:54:53 3 MR. TUMPOSKY: Okay. So we know for sure
03:54:55 4 that all three defendants were aware of that high volume.
03:55:00 5 That came in the testimony of Piro and through the testimony
03:55:04 6 of Dr. Han, herself, who said that Ms. Nassif showed her the
03:55:09 7 high volume.

03:55:10 8 Now, Ms. Nassif may have downplayed a significance
03:55:14 9 to Dr. Han, but the law does not require Dr. Han to have a
03:55:18 10 subjective belief that her conduct is going to result in a
03:55:21 11 constitutional violation under the deliberate indifference
03:55:25 12 standard; it's essentially whether a reasonable objective
03:55:28 13 person, confronted with this information, would believe that
03:55:31 14 they had an obligation to take action, and failure to do so,
03:55:35 15 perhaps, would be deliberate indifference. That's the
03:55:38 16 standard.

03:55:38 17 So the fact alone of the high volume, I would
03:55:42 18 suggest, was sufficient to put all three defendants on
03:55:45 19 notice that they were obligated to turn it over and that the
03:55:48 20 failure to encourage their subordinates to do so would be
03:55:53 21 deliberate indifference.

03:55:54 22 But that's not all we have.

03:55:56 23 Specifically, with respect to Dr. Han, I would
03:55:59 24 suggest that it simply is incredible that the other issues
03:56:07 25 weren't brought to her attention. In other words, Salemi

03:56:12 1 had all these concerns that were brought to his attention
03:56:15 2 from Mr. Piro. And in fact, because of all the concerns,
03:56:19 3 she wasn't under a microscope, she couldn't have been
03:56:24 4 performing all the tests, the high volume, making of
03:56:30 5 mistakes, the unusual high number of returns, so much so
03:56:32 6 that Mr. Salemi assigned Ms. Dookhan, essentially, a
03:56:37 7 babysitter, quite frankly, is how Mr. Piro described it, to
03:56:40 8 keep an eye on her. So this was obviously something that
03:56:43 9 was a topic of discussion.

03:56:44 10 So when Dr. Han says, "Well, all I knew
03:56:47 11 was she was a good employee" -- and the volume was
03:56:50 12 something, and the other things that were mentioned to
03:56:53 13 Salemi and Nassif were things that were troubling. So it's
03:56:58 14 simply not credible that when Nassif is discussing Dookhan
03:57:02 15 with Han, that she says, "Oh, no. No problem." And I think
03:57:08 16 the jury would be free to disregard that, and, in fact,
03:57:11 17 infer the opposite; that if the discussion was about
03:57:13 18 Dookhan, it was about all of the problems that they were
03:57:15 19 aware of at that time, not just about the high numbers.

03:57:16 20 So I would suggest, Your Honor, that
03:57:18 21 the jury could infer that all of the complaints that
03:57:21 22 occurred prior to Jones's trial, did, in fact, make their
03:57:25 23 way as high as Dr. Han, and that she would be obligated, and
03:57:28 24 a reasonable person in her position should think that she
03:57:32 25 was obligated to, in fact, relay that information over to --

03:57:37 1 to law enforcement, to prosecutors and defense lawyers.

03:57:41 2 I think you also have to look at what
03:57:46 3 happened after the Jones trial, to give us a sense of what
03:57:48 4 the office policy was. And I think if you look specifically
03:57:51 5 at her response to what happened in June, Han's response
03:57:56 6 specifically, you'll see that, in fact, her attitude was one
03:58:00 7 of not disclosing. And I think that tells you what culture
03:58:06 8 was in place prior to the Jones trial.

03:58:08 9 You heard that when it came to her
03:58:10 10 attention, that, in fact, Ms. Dookhan had committed this
03:58:14 11 egregious violation of lab policy, the response of Han and
03:58:19 12 Nassif was, number one, to put Dookhan in charge of
03:58:23 13 rewriting the office policies that she had just violated;
03:58:25 14 and number two, to sit on the information for six months,
03:58:28 15 until -- or eight months, in fact, until February of 2012,
03:58:33 16 when she writes a letter finally to the Norfolk district
03:58:37 17 attorney, outlining essentially that they claim this was an
03:58:42 18 isolated incident from a valued employee. And I think the
03:58:45 19 jury can infer, quite frankly, that letter was simply a
03:58:50 20 falsehood and what that tells us about Dr. Han's credibility
03:58:52 21 in another context.

03:58:54 22 So I think that if you look at what
03:58:57 23 Piro reported to Salemi and Nassif, you look at what Han
03:59:02 24 knew about the volume specifically and what that should have
03:59:05 25 told her, based on the testimony of Lawler, and how no one

03:59:08 1 could possibly be doing all those tests; and then you look
03:59:11 2 at whether we can actually believe that Han, in discussing
03:59:14 3 Dookhan, was simply told she's a available employee who's
03:59:19 4 skipping lunch breaks, and I would suggest that the jury
03:59:21 5 would be free to disbelieve that. So I would suggest that
03:59:25 6 all of the evidence that we presented relates equally to all
03:59:29 7 three defendants.

03:59:30 8 And I would also point out that there
03:59:32 9 was such a concern about what Ms. Dookhan was doing, about
03:59:35 10 her volume, that before the Jones trial in 2010, they
03:59:38 11 ordered an audit of her paperwork. Didn't do any retesting,
03:59:42 12 but obviously they thought, maybe there's something up here.
03:59:45 13 Now, the right thing to do would have been to do some
03:59:49 14 retesting on her samples, which they didn't do. And this
03:59:52 15 was before the Jones trial in 2010. So adding that to the
03:59:55 16 picture, and sort of the idea that this didn't make its way
03:59:58 17 all the way to the top, I think is not just an accurate
04:00:02 18 state of the evidence.

04:00:02 19 But you add that to the picture, with
04:00:04 20 all the things that Piro reported in 2009, Lawler's reaction
04:00:09 21 to the volume, that, in his belief you couldn't possibly be
04:00:14 22 doing all the tests, you add that to the postevent conduct,
04:00:17 23 which, reflecting the office culture of hiding things
04:00:20 24 instead of turning them over, gives us an insight to what
04:00:24 25 happened before. You put all of that together, and I think

04:00:26 1 that qualified immunity is not appropriate.

04:00:30 2 And I would point out that you will be
04:00:32 3 the third judge of this court to look at all these legal
04:00:35 4 issues, and the evidence, quite frankly, brought out at
04:00:39 5 trial is more than was presented in the complaint and in the
04:00:43 6 summary judgment papers. And both Judge Saylor and Judge
04:00:47 7 Sorokin, on less evidence, I would suggest, denied the very
04:00:50 8 arguments that the defendants are making now, and I would
04:00:52 9 ask the Court to do the same.

04:00:53 10 THE COURT: All right. Thank you.

04:00:55 11 MR. KELLY: Your Honor, if I could just --
04:00:57 12 his argument boils down to it's incredible that Dr. Han
04:01:01 13 didn't know, and the jury can disregard what she said.
04:01:04 14 Where is the evidence? Your Honor, the evidence -- first of
04:01:07 15 all, he's misstated what Dr. Han said about Ms. Dookhan
04:01:11 16 being reassigned. She wasn't reassigned. She tried to
04:01:16 17 explain to him, he wasn't listening, that she wasn't
04:01:20 18 rewriting office policy. She was talking about scientific
04:01:23 19 testing procedures on actual analyses that were done.

04:01:24 20 Also he quotes from the letter. The letter is not
04:01:26 21 in evidence. Where's the evidence?

04:01:27 22 And third, he talks about Mr. Lawler's comments
04:01:31 23 about his impressions that that number of testing could
04:01:34 24 never be done, it's unfathomable. He was very clear from
04:01:39 25 the witness stand, because he asked him repeatedly and he

04:01:40 1 kept saying, when did he fashion that view in his mind:
04:01:44 2 Late winter, early spring 2011. He said it three or four
04:01:48 3 times under oath.

04:01:50 4 We're talking about a trial which took place in
04:01:52 5 September of 2010. That one piece of evidence postdated
04:01:55 6 this issue. And frankly, there is no evidence regarding
04:01:58 7 Dr. Han that would be sufficient to establish liability.

04:02:02 8 THE COURT: All right. Here's what we're
04:02:06 9 going to do. We are going to -- first thing in the morning,
04:02:13 10 we are going to decide if and what parts of the Office of
04:02:17 11 the Inspector General report are admissible, if anything is
04:02:21 12 admissible, is going to be admitted in the plaintiff's case.
04:02:28 13 At that point, I will consider the plaintiff's case as a
04:02:31 14 whole, complete for purposes of considering a Rule 50
04:02:36 15 motion. All right?

04:02:40 16 MR. KELLY: I understand.

04:02:41 17 THE COURT: So until we get to that point,
04:02:44 18 right now you are reserving your rights, and under the rule,
04:02:49 19 under Rule 50, the motion for judgment as a matter of law
04:02:53 20 can be made at any time before the case is submitted to the
04:02:58 21 jury. So we can move on a little bit, cautiously move on
04:03:03 22 right now until we finish our business with the Inspector
04:03:06 23 General report tomorrow.

04:03:07 24 So I heard your arguments. Tomorrow morning we'll
04:03:10 25 decide about the Inspector General report, we'll have some

04:03:13 1 more argument, limited, as to how that might affect any
04:03:16 2 Rule 50 motions.

04:03:17 3 Right now we're going to move to opening
04:03:21 4 statements, if that's the choice of counsel for Salemi and
04:03:26 5 Nassif. All right?

04:03:28 6 Now, after that, do you have a witness?

04:03:34 7 MR. MARINO: We do, Your Honor.

04:03:36 8 THE COURT: All right. All right. That's
04:03:38 9 how we're going to proceed, then. All right.

04:03:41 10 So for time, you have basically like nine minutes
04:03:53 11 left apiece for openings.

04:03:57 12 MR. KELLY: I think we're only going to have
04:03:59 13 one opening, Your Honor.

04:04:00 14 THE COURT: All right. All right. So you're
04:04:03 15 going to use -- you're going to use the entire time
04:04:06 16 remaining. Who's going to do that?

04:04:09 17 MR. MARINO: Attorney Launie is going to --

04:04:09 18 MR. LAUNIE: I am, Your Honor. I won't use
04:04:11 19 18 minutes.

04:04:11 20 THE COURT: So you have 18 minutes to use.

04:04:16 21 So in other words, Mr. Grace, you're not going to
04:04:17 22 make an opening?

04:04:19 23 MR. GRACE: Probably not. It depends on what
04:04:21 24 I hear.

04:04:22 25 MR. LAUNIE: Let me know. I'll do some

04:04:24 1 stand-up.

04:04:24 2 THE COURT: All right. So that's what you
04:04:25 3 have. If you're going to use all of the defense time, you
04:04:28 4 have 18 minutes. If you want to leave one minute and seven
04:04:32 5 seconds for Mr. Grace, then you can do that. Okay? And
04:04:36 6 then we'll proceed to a witness, if we can get one on.

04:04:40 7 All right, Jarrett. Let's go.

04:04:40 8 (Discussion off the record.)

04:06:10 9 THE COURT: This is good. The next one we
04:06:13 10 all do, we're going to do in Springfield.

04:06:16 11 MS. HEDGES: Are we going to stay in a fancy
04:06:18 12 hotel?

04:06:18 13 MR. TUMPOSKY: Are you going to put us up?

04:06:22 14 (The jury enters the courtroom.)

04:06:41 15 THE COURT: All right. Ladies and gentlemen,
04:06:43 16 during the break, was everyone able to follow my
04:06:45 17 instructions not to speak about the case, begin
04:06:48 18 deliberations, or to research the case in any way through
04:06:52 19 Internet, computer, social media, Internet access?

04:06:57 20 THE JURY: (Negative responses.)

04:06:58 21 THE COURT: And there's nothing that the jury
04:07:01 22 needs to talk to me about?

04:07:03 23 THE JURY: (Negative responses.)

04:07:04 24 THE COURT: And the plaintiff's intention is
04:07:06 25 to rest their case. There may be, tomorrow, consideration

04:07:09 1 of some additional evidence in the plaintiff's -- that will
04:07:14 2 be added to the plaintiff's case. But if that happens, it
04:07:19 3 would likely be not by a witness, it would be documents that
04:07:22 4 are introduced.

04:07:23 5 So at this point, we are right on the verge of
04:07:27 6 starting the defense case. And if you remember at the start
04:07:30 7 of the case, you heard an opening statement from the
04:07:33 8 plaintiff and by Mr. Kelly, one of the defense attorneys.
04:07:37 9 The other defense attorneys chose to, as they can, to
04:07:41 10 reserve their right to do an opening until right before they
04:07:44 11 start their defense case. And that's where we're at. So
04:07:47 12 there will be, I understand it, one opening at this time by
04:07:51 13 the defense. And we can have that right now. Thank you.

04:07:59 14 **OPENING STATEMENT**

04:07:59 15 MR. LAUNIE: Good afternoon, Your Honor,
04:08:03 16 Mr. Clerk.

04:08:05 17 Ladies and gentlemen of the jury, good afternoon.
04:08:07 18 My name is Robert Launie. You haven't heard from me yet.
04:08:11 19 I'm the guy who's been sitting right there keeping quite.
04:08:11 20 But it's my turn to talk to you, give you a brief opening.

04:08:14 21 Now, my brother, Mr. Kelly, represents Dr. Linda
04:08:18 22 Han; he came out earlier on Monday, although it probably
04:08:21 23 seems more than two days ago. He gave an opening on behalf
04:08:24 24 of his client, Dr. Han, but as well as for our client,
04:08:28 25 Ms. Julie Nassif, and Charles Salemi.

04:08:31 1 Now, an opening statement is not evidence, as Your
04:08:35 2 Honor has told you, it's sort of a roadmap of what's to be
04:08:39 3 expected. But here, as far as you jurors, you're sort of
04:08:43 4 getting your money's worth, because you've got a civil trial
04:08:46 5 to decide, but you're now going to also hear a reenactment
04:08:51 6 of Mr. Jones's criminal trial. So you're getting a civil
04:08:54 7 and criminal background. But the fact is that one of the
04:08:56 8 things that you want to decide is, was Mr. Jones's
04:09:00 9 constitutional rights violated in his trial on August 30th
04:09:06 10 and September 1st of 2010.

04:09:08 11 Now, I have had the opportunity, as you have, to
04:09:13 12 listen to live testimony from clients -- from witnesses who
04:09:18 13 worked at the lab, under all three of the defendants. Now,
04:09:25 14 one thing you do as jurors that's important in the roadmap
04:09:29 15 to this case is that you leave your prejudices and your
04:09:33 16 biases at the door, but you never leave your good common
04:09:37 17 sense that you were born with.

04:09:38 18 So what we have is three defendants in a case who
04:09:42 19 are at different levels within this close proximity of this
04:09:46 20 lab. And as any supervisor does, any good person who has
04:09:51 21 delegated responsibilities, they rely on their subordinates.
04:09:57 22 And in this case, I think so far what you've heard and what
04:10:02 23 is clearly going to be established is that these three
04:10:05 24 people relied on each other, made competent decisions, used
04:10:10 25 collective and collaborative bargaining within each other to

04:10:14 1 make good and rational decisions on behalf of the drug lab,
04:10:19 2 to ensure that the testing that was being sent out was
04:10:24 3 accurate.

04:10:25 4 Now, evidence is shown and evidence is going to
04:10:29 5 continue to be shown that the style was nobody was nobody
04:10:33 6 was rushing. Do your job, do it well, accuracy is
04:10:37 7 important. All right. I think we've heard that. I think
04:10:42 8 that the plaintiff has tried to show that there was some
04:10:46 9 push to get volume up and all this. I think from the people
04:10:50 10 that worked at that lab, people who will testify, that just
04:10:53 11 simply has not been the case. That has just simply not been
04:10:57 12 the case, by people who can come to this court, free to say
04:11:00 13 whatever they want now, because the three defendants aren't
04:11:05 14 connected with the lab anymore. Here's their time. And to
04:11:09 15 a person, every single one of them told you, we were never
04:11:13 16 asked to rush. We were always asked to get it right.

04:11:18 17 And that's important, because when you hear the
04:11:22 18 reenactment of Mr. Jones's August 30th and September 1st
04:11:27 19 trial, the jury got it right. And you're going to hear from
04:11:32 20 the police officers, their observations. You're going to
04:11:35 21 hear, just as you heard from the stand, Ms. Corbett. You're
04:11:39 22 going to hear a jury of Mr. Jones's peers have a finding,
04:11:47 23 and that finding was based on the evidence that was
04:11:52 24 presented at that trial.

04:11:54 25 What is also important is that evidence was given

04:11:57 1 to the Commonwealth, passed on to the defense, of what was
04:12:01 2 known by the three defendants in this case on August 30th
04:12:06 3 and September 1st of 2010. Now, your memory controls as to
04:12:13 4 what dates are important and what dates were testified to,
04:12:19 5 but there are witnesses in this case who will tell you that
04:12:25 6 I may have reported something, maybe in 2008, I could have
04:12:28 7 been three years off, two years off. I don't know. But
04:12:32 8 when something was brought to their attention, those three
04:12:36 9 defendants, they acted. They acted. They did things which
04:12:41 10 were in the best interest of the lab and to the person
04:12:44 11 before them, their subordinates, the employees of the state,
04:12:50 12 and what they could do at that point in time and whether it
04:12:53 13 was rational.

04:12:54 14 Now, we've -- I've made it through the individual
04:12:59 15 voir dire. Again, I ask you to use your good common sense
04:13:02 16 as to how you deal with these types of issues and whether
04:13:06 17 they rose to what the plaintiffs need you to believe, that a
04:13:10 18 constitutional violation of that man's rights were violated
04:13:13 19 by what these people did at the lab. And after all the
04:13:16 20 evidence is in, I suggest that the only verdict that you can
04:13:20 21 come to is that these three defendants acted properly, and
04:13:23 22 that there was no violation. Thank you.

04:13:25 23 THE COURT: All right. Thank you.

04:13:52 24 MR. MARINO: Your Honor, we call Julie
04:13:55 25 Nassif.

04:13:55 1 THE COURT: All right. Let me ask Mr. Grace,
04:13:58 2 any opening?

04:13:59 3 MR. GRACE: No, Your Honor. Thank you.

04:14:00 4 THE COURT: All right. Opening waived?

04:14:02 5 MR. GRACE: Yes.

04:14:03 6 THE COURT: All right.

04:14:18 7 (The witness was duly sworn.)

04:14:25 8 THE DEPUTY CLERK: Please state your full
04:14:26 9 name, spelling your last.

04:14:29 10 THE WITNESS: Julianne Nassif, N-a-s-s-i-f.

04:14:29 11 **JULIANNE NASSIF**

04:14:41 12 having been duly sworn, testified as follows:

04:14:41 13 **DIRECT EXAMINATION BY COUNSEL FOR DEFENDANT NASSIF**

04:14:41 14 BY MR. MARINO:

04:14:42 15 Q. Good afternoon, Ms. Nassif.

04:14:45 16 A. Good afternoon.

04:14:45 17 Q. Can you tell me a little bit about yourself,
04:14:47 18 meaning your education.

04:14:48 19 A. Sure. I have a bachelor's degree in
04:14:50 20 environmental health, and I have a master's degree in
04:14:54 21 environmental science.

04:14:56 22 Q. Where did you obtain those degrees?

04:14:58 23 A. My bachelor's degree I got at Quinnipiac
04:15:04 24 University in Hampton, Connecticut; and my master's degree
04:15:07 25 at the University of Massachusetts at the Boston campus.

04:15:11 1 Q. And are you married now?

04:15:12 2 A. I am.

04:15:13 3 Q. Do you have children?

04:15:13 4 A. I have two.

04:15:14 5 Q. How old?

04:15:15 6 A. 19 and 23.

04:15:16 7 Q. Now, I want to talk to you a little bit about your

04:15:20 8 employment history.

04:15:21 9 A. Okay.

04:15:22 10 Q. Where did -- at some point you worked for the

04:15:25 11 Department of Public Health, correct?

04:15:26 12 A. That's true, yes. The Massachusetts

04:15:29 13 Department --

04:15:30 14 Q. Of Massachusetts, yes.

04:15:31 15 A. Yes.

04:15:32 16 Q. When did you begin working for the Department of

04:15:35 17 Public Health in Massachusetts?

04:15:36 18 A. In 1984.

04:15:38 19 Q. Was that shortly after you got out of college?

04:15:40 20 A. I had one real job prior to that, at a

04:15:45 21 commercial laboratory, as an analytical chemist.

04:15:49 22 Q. Okay. And then you found employment with the

04:15:51 23 Department of Public Health, correct?

04:15:53 24 A. Yes.

04:15:54 25 Q. All right. What was your first job there?

04:15:56 1

A. I was a chemist 1.

04:15:58 2

Q. With what department?

04:16:00 3

A. In the environmental laboratories.

04:16:02 4

Q. And what were your job responsibilities as a chemist 1 in the environmental laboratory?

04:16:05 5

04:16:08 6

A. Primarily the analysis of food products for pesticide residue analysis and some other chemical contaminants, but primarily pesticide residue analysis.

04:16:11 7

04:16:21 8

Q. And how long did you remain in that position?

04:16:25 9

04:16:27 10

A. I was promoted the following year to a chemist 2.

04:16:30 11

04:16:30 12

Q. Okay. Within the same lab?

04:16:34 13

A. Yes.

04:16:34 14

Q. How about after that?

04:16:35 15

04:16:38 16

A. The following year, I was promoted to a chemist 3. So that's around 1986. So I was the chemist 3, and at some point functionally became the supervisor of the organic section of the environmental laboratories.

04:16:45 17

04:16:48 18

04:16:51 19

04:16:52 20

Q. And when you were in that role, what were your duties and responsibilities?

04:16:54 21

04:16:56 22

A. So they were quite varied, as that laboratory tests a variety of sample types, clinical samples, food samples, and environmental media for chemical contaminants. So I would oversee the activities of the

04:17:01 23

04:17:06 24

04:17:13 25

04:17:17 1 subordinate chemists in terms of, you know, their -- their
04:17:25 2 testing, allocate the work flow, and review data.

04:17:29 3 Q. And how long did you remain in that position?

04:17:35 4 A. I was in the title until 1990, but functionally
04:17:40 5 I was acting out of title as the lab supervisor.

04:17:44 6 Q. And at some point did you change jobs?

04:17:48 7 A. Yes. In 2000 -- in 1990, I was -- my position
04:17:58 8 was reallocated. It was recognized that I was working
04:18:01 9 significantly out of title and was made a manager, a
04:18:10 10 program manager, and that -- my title became director of
04:18:13 11 environmental chemistry.

04:18:17 12 Q. Where was your office located?

04:18:19 13 A. At -- mostly on the third floor of the state
04:18:23 14 laboratory institute.

04:18:24 15 Q. Okay. And how long did you remain at that job
04:18:28 16 title, with those duties?

04:18:30 17 A. Until about 2006.

04:18:35 18 Q. Okay. So what happened in 2006?

04:18:39 19 A. The previous few years, our laboratory director
04:18:45 20 had retired, and we had an acting laboratory director in
04:18:49 21 that capacity. Finding a replacement for the laboratory
04:18:55 22 director took far longer than anyone anticipated, so the
04:19:00 23 acting laboratory director, in an effort to streamline the
04:19:04 24 reporting structure at the lab, created these three major
04:19:10 25 scientific divisions. So there became an analytical

04:19:16 1 chemical division, molecular diagnostics and virology, and
04:19:22 2 microbiology. And --

04:19:22 3 Q. So by streamlining those positions, your job title
04:19:27 4 changed again?

04:19:28 5 A. Yes. Then I became the director of analytical
04:19:32 6 chemistry.

04:19:33 7 Q. As the director of analytical chemistry, what labs
04:19:38 8 fell under your purview?

04:19:40 9 A. So there was the childhood lead screening
04:19:44 10 laboratory, the environmental chemistry laboratory, the
04:19:48 11 chemical threat response laboratory, the drug laboratory
04:19:51 12 in Boston, and the drug laboratory in Amherst.

04:19:54 13 Q. So you had five labs that you were overseeing?

04:19:58 14 A. Yes.

04:19:59 15 Q. And what year was this?

04:20:01 16 A. 2006.

04:20:02 17 Q. As the director of analytical chemistry, can you
04:20:08 18 describe for the jurors what your duties and
04:20:10 19 responsibilities were?

04:20:11 20 A. They were quite varied. It involved, you know,
04:20:17 21 personnel, budgetary issues, grant writing, overseeing the
04:20:25 22 technical and administrative direction of those
04:20:27 23 laboratories, assisting with any kind of external
04:20:53 24 validation or accreditation.

04:20:53 25 Q. Now, you said one of the labs was the drug lab in

04:20:53 1

Amherst?

04:20:53 2

A. Yes.

04:20:53 3

Q. And were you required to go there, as well?

04:20:53 4

A. I did go on occasion. More often than not, Jim Hanchett, the lab supervisor in Amherst, would travel to Boston.

04:20:54 5

04:20:58 6

Q. And how long did you hold that job, Ms. Nassif?

04:20:59 7

04:21:02 8

A. Until 2012.

04:21:03 9

Q. Okay. Now, are you currently employed?

04:21:06 10

A. I am.

04:21:06 11

Q. What do you do?

04:21:07 12

A. I am the analytical chemistry program manager at the New Hampshire Public Health Laboratories.

04:21:14 13

04:21:17 14

Q. And how long have you had that job?

04:21:19 15

A. Since 2013.

04:21:21 16

Q. Now, going back to your education a little bit, again, what were your degrees in?

04:21:26 17

04:21:28 18

A. Environmental health and environmental science.

04:21:32 19

Q. And did you -- were you trained in chemistry?

04:21:36 20

A. I absolutely took chemistry as part of my curriculum, yes.

04:21:40 21

04:21:41 22

Q. And in your education, were some of the focuses that you -- some of the things that you focused on, were they analytical in nature?

04:21:43 23

04:21:47 24

04:21:49 25

A. Yes.

04:21:50 1 Q. Scientific?

04:21:51 2 A. Yes.

04:21:52 3 Q. Now, when you were at the Department of Public
04:21:56 4 Health -- and I want to put your time frame down more
04:22:00 5 to 2006 through 2012, when you were the director of
04:22:03 6 analytical chemistry. Okay?

04:22:05 7 A. Okay.

04:22:06 8 Q. Can you discuss what type of training you were
04:22:10 9 given back in 2006, when you became the director of
04:22:12 10 analytical chemistry?

04:22:15 11 A. It's really challenging for me to put things --
04:22:19 12 when you've worked someplace for 28 years, to know which
04:22:24 13 years you attended which trainings.

04:22:26 14 Q. I understand. Was training available to you
04:22:29 15 through the Department of Public Health?

04:22:31 16 A. There was professional development training
04:22:35 17 available. Sometimes training was grant related,
04:22:40 18 sometimes it was offered through human resources.

04:22:45 19 Q. Okay. Were you ever given any sort of supervisor
04:22:50 20 training?

04:22:51 21 A. Sure. There were some mandated trainings with
04:22:54 22 respect to workplace violence, diversity in the workplace,
04:23:04 23 awareness of sexual harassment. I did take management
04:23:11 24 training, but I honestly don't know the dates of when that
04:23:16 25 occurred. So I don't know if it happened after the 2006

04:23:18 1 time frame.

04:23:19 2 Q. Okay. And were funds available for other chemists
04:23:24 3 within the lab, specifically within the drug lab?

04:23:28 4 A. Within the drug lab, funds were really limited.
04:23:32 5 Travel and professional development opportunities were
04:23:37 6 really restricted to grant funded or grant -- in some
04:23:42 7 cases really grant-mandated requirements. So there were
04:23:51 8 very few resources for professional development for the
04:23:55 9 drug laboratory.

04:23:56 10 Q. Okay. Was any legal training offered to the
04:24:07 11 chemists or yourself?

04:24:08 12 A. At one point, we acquired some grant funding,
04:24:12 13 and I was able to bring in a local attorney who did some
04:24:16 14 expert witness testimony with the chemists.

04:24:19 15 Q. And do you recall when that was?

04:24:21 16 A. It was post *Melendez-Diaz*.

04:24:24 17 Q. And was there a reason that you focussed on that
04:24:26 18 issue?

04:24:26 19 A. Because they were being -- you know, many of the
04:24:29 20 junior staff had never testified in court, and so they
04:24:36 21 were -- they were a little anxious about it. And so we
04:24:39 22 thought it would be advisable to bring in someone to help
04:24:43 23 them understand the process.

04:24:45 24 Q. Would it be fair to say that the staff in the drug
04:24:49 25 lab were essentially trained as you were, in analytical

04:24:53 1

chemistry?

04:24:53 2

A. For the most part, yes.

04:24:55 3

04:24:58 4

Q. And no legal sort of training was offered to them within the drug lab, between 2006 and 2012, while you were there?

04:25:02 5

04:25:03 6

A. No.

04:25:06 7

04:25:11 8

Q. Now, I want to talk to you a little bit about the lab setup. Okay?

04:25:12 9

A. Sure.

04:25:13 10

Q. You can see that diagram next to you there?

04:25:16 11

A. Uh-huh.

04:25:17 12

Q. Is that a fair -- and I think that's Exhibit --

04:25:19 13

A. I think it's 1.

04:25:21 14

04:25:26 15

Q. Exhibit 1? Exhibit 1. Looking at Exhibit 1, Ms. Nassif, is that a fair and accurate representation of the drug lab in 2011/2012?

04:25:28 16

04:25:30 17

A. Yes, it is.

04:25:32 18

Q. Can you --

04:25:36 19

MR. MARINO: Your Honor, if she could step down.

04:25:38 20

04:25:39 21

THE COURT: Sure.

04:25:40 22

BY MR. MARINO:

04:25:41 23

Q. If you could just show us on that diagram,

04:25:45 24

Ms. Nassif, where your office was located.

04:25:48 25

A. Sure. It was right here, in the lower

04:25:51 1

right-hand corner.

04:25:51 2

Q. Lower right-hand corner?

04:25:53 3

A. Uh-huh.

04:25:54 4

Q. Okay. Now, there's another office on the side of that?

04:25:58 5

A. Here?

04:25:58 6

04:25:59 7

Q. Yeah. Who was there?

04:26:00 8

A. At some points in time, I had an assistant, and some points in time, it was the chemical threat coordinator. And at some points in time, Ms. Dookhan was in there, as well.

04:26:03 9

04:26:06 10

04:26:14 11

04:26:15 12

Q. What room was that?

04:26:17 13

A. This is 305, and my office was 305-A.

04:26:21 14

Q. Okay. Now, while you're there --

04:26:25 15

A. Okay.

04:26:26 16

Q. -- can you show us where the evidence room is there?

04:26:28 17

04:26:29 18

A. It is here.

04:26:33 19

Q. Now, how did you -- if you came off the elevators, there's a corridor to the left. Is that how you get into the drug lab?

04:26:38 20

04:26:42 21

04:26:42 22

A. Here?

04:26:43 23

Q. Yes.

04:26:43 24

A. Uh-huh.

04:26:44 25

Q. Could you just walk into the drug lab?

04:26:46 1 A. No. So first of all, in the lobby of the
04:26:49 2 building, it was a secure building. So you would have to
04:26:52 3 provide identification and have a reason to enter the
04:26:56 4 building. If you traveled up to the third floor, each of
04:27:02 5 the wings had fire doors, and the fire doors were
04:27:05 6 controlled by proximity card readers. So you needed to
04:27:12 7 have -- these areas were restricted access, so only people
04:27:15 8 who had a need to be in that area could access the area.

04:27:19 9 Police officers who showed proper identification
04:27:24 10 in the lobby were provided with a visitor badge that would
04:27:27 11 give them access to this wing only.

04:27:30 12 Q. Okay. And then how would they get down to the
04:27:32 13 evidence room?

04:27:34 14 A. Turn the corner.

04:27:35 15 Q. Okay.

04:27:36 16 A. Yeah.

04:27:37 17 Q. And then were they ever allowed to enter the
04:27:40 18 evidence room?

04:27:40 19 A. No.

04:27:40 20 Q. Now, how did the drugs get into the evidence room?

04:27:43 21 A. There is a window right here, and when officers
04:27:50 22 came to the window, it would be up, and there would be an
04:27:55 23 evidence officer on the other side of the window, and they
04:27:59 24 would transfer across the window.

04:28:00 25 Q. Okay. Now, looking at that diagram, you see that

04:28:04 1 there's a number of rooms that are marked "drug labs." Do
04:28:07 2 you see that?

04:28:08 3 A. Yes.

04:28:10 4 Q. Now, if you were to come in that central corridor
04:28:11 5 there, instead of taking a left, you would go right, what
04:28:15 6 would happen there? What would be there?

04:28:17 7 A. Here?

04:28:18 8 Q. Yes.

04:28:19 9 A. So there was a door here. This file room is not
04:28:22 10 included, but there's a door here.

04:28:24 11 Q. Yes.

04:28:26 12 A. And there's a hand reader there. And -- a hand
04:28:32 13 reader and a code that you would have to punch in to
04:28:35 14 access this corridor, which led to these other rooms.

04:28:40 15 Q. Okay. And if you had gone left past the evidence
04:28:43 16 room?

04:28:43 17 A. Here?

04:28:44 18 Q. Yes. You come down. Was there access to any of
04:28:47 19 the drug labs from there?

04:28:49 20 A. On this left side of the corridor?

04:28:51 21 Q. Yes.

04:28:53 22 A. Yes. There is one access door down here, at
04:28:56 23 which it was equipped with a hand reader.

04:28:59 24 Q. Okay.

04:28:59 25 A. And a code.

04:29:00 1

Q. And a code.

04:29:01 2

A. Uh-huh.

04:29:02 3

Q. All right. Now, on the right-hand side of the hallway --

04:29:04 4

04:29:05 5

A. And can I just say, the code was unique to the individual.

04:29:08 6

04:29:08 7

Q. Okay. Thank you.

04:29:09 8

A. Uh-huh.

04:29:10 9

Q. On the right-hand side of that diagram, you see two doorways with little black markings?

04:29:13 10

04:29:16 11

A. These?

04:29:17 12

Q. Yeah. What does that reflect, if you can tell us?

04:29:21 13

A. Those were the hand readers that were required to access the evidence office and this smaller office here, which is part of the evidence office.

04:29:24 14

04:29:26 15

04:29:28 16

Q. Why were there hand readers there?

04:29:30 17

A. To restrict access.

04:29:32 18

Q. And was that for -- the reason why all the hand readers were there?

04:29:35 19

04:29:36 20

A. Yes.

04:29:37 21

Q. And who was the access restricted to, to the evidence room, if you know?

04:29:41 22

04:29:42 23

A. For those people who needed to enter. So the evidence officers and the chemists did have access to those areas.

04:29:46 24

04:29:51 25

04:29:52 1 Q. Okay. You can return to the stand. Thank you.

04:30:02 2 A. Okay.

04:30:22 3 Q. Can you see that okay?

04:30:23 4 A. Yeah.

04:30:23 5 Q. Now, Ms. Nassif, I'm going to show you what's been

04:30:31 6 previously marked as Exhibit 15. Okay?

04:30:33 7 A. Okay.

04:30:33 8 Q. And looking at that, Ms. Nassif, is that a fair

04:30:36 9 and accurate representation of the layout -- I'm sorry, the

04:30:41 10 chain of command within the forensic drug lab in 2011/2012?

04:30:45 11 A. Yes.

04:30:46 12 Q. And where do you fall there? Where are you?

04:30:48 13 A. I'm here.

04:30:51 14 Q. All right. And who would you report up to?

04:30:54 15 A. To Linda Han.

04:30:56 16 Q. Okay. And who was below you?

04:30:58 17 A. For the drug laboratory?

04:31:01 18 Q. For the drug lab.

04:31:02 19 A. Chuck Salemi.

04:31:04 20 Q. Now, there's kind of a dotted line going down to

04:31:09 21 the left there. Who is that pointing to?

04:31:10 22 A. Elizabeth O'Brien.

04:31:12 23 Q. And what was her role?

04:31:13 24 A. She was the supervisor of the evidence office.

04:31:15 25 Q. Okay. And does she also report to you?

04:31:18 1

A. Yes.

04:31:18 2

Q. Did she also report to Mr. Salemi, as well?

04:31:22 3

A. In a functional way, yes.

04:31:25 4

Q. Now, looking at that chart --

04:31:30 5

MR. MARINO: May I approach, Your Honor?

04:31:33 6

THE COURT: Yes.

04:31:35 7

BY MR. MARINO:

04:31:37 8

Q. We have our evidence officers listed here,

04:31:40 9

correct?

04:31:40 10

A. Yes.

04:31:40 11

Q. And there was four of them?

04:31:42 12

A. Yes.

04:31:43 13

Q. And then going into the next room, there's --

04:31:48 14

A. So Janice Zanolli was not a full evidence

04:31:53 15

officer. She was evidence retrieval is what it says

04:31:58 16

there.

04:31:58 17

Q. Oh. I'm sorry. Evidence retrieval. Okay. So

04:32:03 18

there was three evidence officers?

04:32:03 19

A. Yes.

04:32:03 20

Q. How about Gloria Phillips? Was she there a lot?

04:32:07 21

A. She was out on an intermittent family medical

04:32:10 22

leave. She had a severely ill child. So you know, she

04:32:15 23

was there at times and then not there for extended periods

04:32:18 24

of time.

04:32:20 25

Q. So mainly the evidence office is run by two

04:32:21 1

people?

04:32:22 2

A. Yes. Yeah.

04:32:23 3

Q. Now, it's -- this is broken into the three -- I'm sorry, four separate labs. Do you see that?

04:32:30 5

A. Yes.

04:32:30 6

Q. Now, in this first one here, it says "Chemist 3 Vacant"?

04:32:34 7

04:32:34 8

A. Uh-huh.

04:32:35 9

Q. Can you tell me who was in that spot?

04:32:37 10

A. Elizabeth O'Brien.

04:32:38 11

Q. And do you recall when she was moved to be a lab supervisor 1 in the evidence office?

04:32:43 12

04:32:46 13

A. I don't. I heard her testimony this morning, but I don't remember exactly when that was. I think she said 2009, but I'm not positive.

04:32:48 14

04:32:51 15

04:32:53 16

Q. Now, it's listed here as vacant. How come that position wasn't filled?

04:32:56 17

04:32:57 18

A. We weren't allowed to fill vacant positions. There was a hiring freeze, and there was insufficient funding.

04:33:00 19

04:33:05 20

04:33:05 21

Q. So you, as the director of analytical chemistry, weren't able to make that decision to fill that?

04:33:09 22

04:33:11 23

A. No.

04:33:12 24

Q. No?

04:33:12 25

A. No.

04:33:13 1 Q. Okay. Now, if we go to the next room, there's
04:33:15 2 three spots. We have chemistry 3, which is Mr. Lawler. Do
04:33:20 3 you see that?

04:33:20 4 A. Yes.

04:33:21 5 Q. And this person here, Hevis Leschi?

04:33:30 6 A. Uh-huh.

04:33:30 7 Q. There's also a vacant spot there.

04:33:30 8 A. Uh-huh.

04:33:31 9 Q. And who was in that on spot?

04:33:33 10 A. Zhi Tan.

04:33:35 11 Q. What happened to him?

04:33:37 12 A. He retired.

04:33:37 13 Q. And were you able to fill that spot?

04:33:37 14 A. No.

04:33:37 15 Q. And you couldn't fill that spot, either?

04:33:39 16 A. No.

04:33:39 17 Q. Okay. And again we go to this next lab, and
04:33:42 18 there's four chemists there, one of them being a vacant
04:33:46 19 chemist 1. Who was in that spot?

04:33:48 20 A. I think it was Xu Ying Gao, but I'm not
04:33:53 21 positive.

04:33:53 22 Q. And Ms. Gao, what --

04:33:54 23 A. Oh. Actually, it might be Stacy Desjardins.

04:34:01 24 Q. Did that person remain with the lab, whoever was
04:34:03 25 there?

04:34:03 1

A. No.

04:34:04 2

Q. And I take it you weren't able to fill that spot?

04:34:06 3

A. Correct.

04:34:06 4

Q. And then the fourth lab had four people in it,

04:34:09 5

correct?

04:34:09 6

A. Yes.

04:34:10 7

Q. Now, was the lab set up so that there would be

04:34:15 8

people who were either chem 1, chem 2, or chem 3?

04:34:19 9

A. That was the way -- yeah, pretty much was set up

04:34:22 10

that way.

04:34:23 11

Q. And is that how it was set up when you became the

04:34:26 12

director of analytical chemistry in 2006?

04:34:31 13

A. Yes.

04:34:31 14

Q. The chemists that were there -- well, strike that.

04:34:35 15

After 2006, did you hire any chemists yourself?

04:34:40 16

A. No.

04:34:40 17

Q. No. So essentially you inherited this lab as is?

04:34:44 18

A. Yes.

04:34:45 19

Q. But with more employees?

04:34:47 20

A. Oh, yeah.

04:34:57 21

Q. Originally?

04:34:57 22

A. Yes.

04:35:00 23

Q. Annie Dookhan is listed on there in the second

04:35:03 24

column as a chemist 2. Do you see that?

04:35:05 25

A. I do.

04:35:05 1 Q. And who was her supervisor when you inherited the
04:35:09 2 lab in 2006?

04:35:09 3 A. Elizabeth O'Brien.

04:35:11 4 Q. And once Ms. O'Brien became the evidence officer,
04:35:15 5 who was Ms. Dookhan's supervisor at that point?

04:35:18 6 A. Chuck Salemi?

04:35:21 7 Q. Now, was Chuck Salemi the supervisor of all the
04:35:25 8 chemists?

04:35:25 9 A. Yes.

04:35:25 10 Q. So if they had a problem, they could go to him,
04:35:28 11 right?

04:35:28 12 A. Yes.

04:35:28 13 Q. Now, having a chem 3 in the laboratory, what was
04:35:32 14 that chem 3's job, if you can tell us?

04:35:36 15 A. I -- as I understand it, they were to provide
04:35:42 16 technical assistance and guidance to the more-junior
04:35:48 17 members of the staff and to mentor them.

04:35:52 18 Q. Okay. Were they there to watch over what they
04:35:56 19 were doing?

04:35:57 20 A. No. They did perform their performance
04:36:02 21 evaluations, however.

04:36:03 22 Q. Okay. But were they -- were they supervising
04:36:07 23 these other chemists? Or were they just sharing lab space
04:36:11 24 with them?

04:36:12 25 A. I'm -- they were supervising them with -- I'm

04:36:18 1 not sure if Peter actually did the performance evaluations
04:36:22 2 for those individuals or not.

04:36:25 3 Q. Okay. Now, I want to talk to you a little bit
04:36:30 4 about Annie Dookhan. You said she was supervised by
04:36:34 5 Ms. O'Brien, correct?

04:36:36 6 A. Yes.

04:36:38 7 Q. All right. How did Ms. O'Brien speak about
04:36:42 8 Ms. Dookhan to you?

04:36:43 9 A. Quite favorably. She felt that she was a
04:36:50 10 very -- very competent, dedicated individual, bit of a
04:36:56 11 workaholic. She was very friendly, outgoing, well spoken.

04:37:08 12 Q. Okay. Did she ever talk about her work as a
04:37:09 13 chemist?

04:37:10 14 A. Only in the most positive terms.

04:37:14 15 Q. Now, your role as the director of analytical
04:37:19 16 chemistry, I want to talk a little bit about your
04:37:21 17 administrative duties. Okay?

04:37:22 18 A. Sure.

04:37:23 19 Q. Now, can you describe -- and I know you went
04:37:27 20 through some of this, but your duties in 2010/2011, what
04:37:32 21 would they entail? What would you do kind of on a daily
04:37:36 22 basis, if you can recall that?

04:37:37 23 A. Well, it was highly variable, but it would
04:37:41 24 involve any kind of meetings with senior management around
04:37:50 25 budget, information technology, grants, new initiatives

04:37:55 1 that the department was doing, bringing on new tests,
04:38:01 2 providing technical and administrative oversight of the
04:38:04 3 laboratories. And that's sort of the day-to-day.

04:38:12 4 Q. Okay. Now, when you say "laboratories," was the
04:38:16 5 drug lab your only focus?

04:38:18 6 A. No. No.

04:38:18 7 Q. So did you have to do these sorts of things for
04:38:22 8 the other labs that you were supervising, as well?

04:38:25 9 A. Yes.

04:38:25 10 Q. And you talked about grants. What were the
04:38:28 11 reasons for grants? What would you do for a grant? How
04:38:31 12 would you get a grant?

04:38:32 13 A. Well, to get a grant, you -- first of all, you
04:38:35 14 have to look for the grant opportunity, respond to it,
04:38:40 15 prepare a grant proposal, do all the research necessary to
04:38:44 16 have the substance for the grant proposal; prepare a
04:38:50 17 budget, go through the process of review through
04:38:55 18 Department of Public Health, and then submit the grant.
04:39:01 19 If you're awarded it, then there were lots of issues
04:39:05 20 around bringing it on, whether you're bringing on new
04:39:08 21 tests, new initiatives, all the administrative work that
04:39:12 22 is involved with a grant.

04:39:14 23 Q. Okay. Now, why would you be looking for grants,
04:39:18 24 if your labs -- if the Hinton lab was run by the state?

04:39:24 25 A. Well, because there -- if there really wasn't

04:39:26 1 enough funding to -- to accomplish what needed to be done.
04:39:36 2 And sometimes there were special initiatives coming down,
04:39:41 3 perhaps from the Center for Disease Control, or Homeland
04:39:44 4 Security, or others in a very directed way around
04:39:48 5 emergency response, emergency preparedness. So those
04:39:53 6 would be opportunities to get resources for the
04:40:00 7 laboratory.

04:40:00 8 Q. Okay. And was that just the drug lab, or was that
04:40:02 9 for other labs that you supervised?

04:40:05 10 A. That was for all of the laboratories.

04:40:07 11 Q. Okay. Now, because you were run by the state, you
04:40:11 12 were given a budget, correct?

04:40:14 13 A. We were given a budget for the state -- the
04:40:18 14 Hinton laboratory as a whole had a budget.

04:40:21 15 Q. Okay.

04:40:21 16 A. The drug laboratory had a line item on that
04:40:25 17 budget. The environmental laboratory had a line item.
04:40:29 18 The childhood lead screening laboratory, we did
04:40:34 19 third-party billing for that. So that was funded entirely
04:40:37 20 by fees that went into a retained revenue account. And
04:40:41 21 the chemical threat laboratory was funded entirely with
04:40:46 22 federal funds, federal grant funds.

04:40:48 23 Q. Did you have any say in what was budgeted or put
04:40:52 24 in the line item for any of your labs?

04:40:56 25 A. We were given a number, and then we tried to

04:41:02 1 make it work.

04:41:03 2 Q. Okay. When it came to the drug lab, did you ever
04:41:06 3 have a chance to try and request more funds?

04:41:09 4 A. Oh, yes. Yeah.

04:41:10 5 Q. How often would you do that?

04:41:11 6 A. So in -- around 2007, put together a plan
04:41:22 7 with -- we sort of put out this vision of where we wanted
04:41:26 8 to be, in terms -- with respect to accreditation and other
04:41:31 9 initiatives. So at first, the first thing that we wanted
04:41:35 10 to tackle was the physical space of the laboratory. So I
04:41:40 11 requested that the facility manager meet with me, and we
04:41:44 12 put together a plan for reconfiguring the space, so that
04:41:52 13 it wasn't a lot of little rooms, but rather a larger, open
04:41:58 14 space.

04:41:58 15 Q. And what would that accomplish?

04:41:59 16 A. That would provide for greater interaction
04:42:03 17 between the chemists, so that they would be able to
04:42:09 18 collaborate and talk with one another. It would provide
04:42:13 19 efficiency in the processes. It would also provide
04:42:18 20 additional oversight in that there would be more people in
04:42:22 21 a given room.

04:42:23 22 Q. And were you able to get any of the funds
04:42:25 23 available to do that?

04:42:26 24 A. No. We were able to -- the estimate was that it
04:42:30 25 would be about a million dollars to reconfigure that

04:42:32 1

space.

04:42:33 2

Q. So it's safe to say that that never happened?

04:42:37 3

A. It did not happen. Do you want to hear about the other opportunities?

04:42:44 5

Q. Absolutely.

04:42:45 6

A. So we then, you know, looked at some grant funding opportunities, and in researching the grant funding opportunities from the Department of Justice, I had become aware that only one entity per state is actually allowed to be a recipient of Department of Justice funds. And in Massachusetts, the Department of Public Safety was that designated recipient.

04:43:15 13

Q. So with them being a recipient, you're unable to get any additional funds from them?

04:43:19 14

04:43:22 15

A. We're unable to apply directly to the Department of Justice for funding.

04:43:26 16

04:43:27 17

So we started working -- there was a group called the Forensic Science Advisory Board, that was chaired by the undersecretary of public safety, and it had representatives from the district attorney's offices, police chiefs, the three laboratories, the public safety, public health, and the Worcester laboratory, and became engaged in that process with them. It made them aware of our resource needs, the fact that we -- we just didn't have the capacity to test the number of samples that we

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04:44:09 1 had.

04:44:13 2 And through the course of those discussions, the
04:44:16 3 undersecretary suggested to the Department of Public
04:44:19 4 Safety that they might be able to make a small award from
04:44:23 5 their Coverdell grant to us, for -- for us to use. And
04:44:31 6 also the department -- the federal US Attorney's Office
04:44:35 7 approached us about some Byrne grant funding. We did
04:44:42 8 apply for a Byrne grant of \$105,000. It was not awarded.
04:44:48 9 However, they did give us a small amount of money. And I
04:44:52 10 can't remember the exact amount, but it was around
04:44:55 11 \$10,000, specifically for overtime. And that was geared
04:44:59 12 towards gang-related cases.

04:45:01 13 Q. Okay. And when you say "gang-related," why was it
04:45:05 14 focused on that?

04:45:06 15 A. That was the nature.

04:45:09 16 MR. TUMPOSKY: Objection.

04:45:10 17 THE COURT: What's the objection?

04:45:12 18 MR. TUMPOSKY: Relevance.

04:45:14 19 THE COURT: I don't really see the relevance.
04:45:16 20 Just move on. So the objection is sustained.

04:45:20 21 BY MR. MARINO:

04:45:20 22 Q. Now, for the drug lab, Ms. Nassif, were there
04:45:29 23 standard operating procedures?

04:45:31 24 A. There was the training packet that was developed
04:45:37 25 by -- I don't know exactly who developed it, to be honest

04:45:43 1 with you, back in 2004, and then Mr. Salemi's additions to
04:45:47 2 that. There were also processes for the evidence office.
04:45:55 3 And we were in the process of developing technical
04:45:59 4 protocols for things like -- there was one in process for
04:46:06 5 the analysis of mushrooms, one in process for the
04:46:10 6 operation of a specific analytical instrument. And those
04:46:15 7 were in place.

04:46:17 8 MR. MARINO: Okay.

04:46:17 9 THE COURT: Attorney Marino, I'm going to
04:46:19 10 stop you. It seems like a logical place. You just seem to
04:46:24 11 start questioning about lab procedures, so it might be a
04:46:27 12 break, if we pick up right there in the morning.

04:46:29 13 MR. MARINO: Thank you, Your Honor.

04:46:30 14 THE COURT: On lab procedures. We're going
04:46:32 15 to be stopping in four minutes, anyway, was my plan.

04:46:37 16 All right. Ladies and gentlemen, we're done for
04:46:40 17 the day. We will see you at 9 o'clock tomorrow morning.
04:46:44 18 Please do not begin discussing the case, begin deliberating
04:46:46 19 the case. Do not try to investigate the case in any way or
04:46:49 20 access it through the Internet or social media. All right.
04:46:53 21 Good night.

04:46:54 22 THE DEPUTY CLERK: All rise.

04:46:57 23 (The jury exits the courtroom.)

04:47:28 24 THE COURT: All right. We will start at
04:47:30 25 quarter of 9:00 tomorrow morning with our discussion about

04:47:34 1 what you -- what you submit for your highlighted versions of
04:47:39 2 the Inspector General report, or however you intend to
04:47:42 3 approach that issue tomorrow morning. It will be resolved,
04:47:47 4 that issue, one way or another, admissible or not.
04:47:51 5 Sections, everything will be resolved before the jury comes
04:47:55 6 out tomorrow. All right?

04:47:58 7 MR. TUMPOSKY: Your Honor, do you have a plan
04:48:01 8 as far as whether -- we would certainly close tomorrow, if
04:48:04 9 we got there, or would we do it on Friday, start closing on
04:48:08 10 Friday?

04:48:08 11 MR. KELLY: I don't think we -- Your Honor,
04:48:10 12 to respond to that, we won't get there tomorrow. I mean, I
04:48:14 13 don't mind telling you, from the scheduling standpoint, from
04:48:17 14 the defense case, at this point, it will be, obviously, the
04:48:21 15 conclusion of Ms. Nassif's testimony, followed by testimony
04:48:25 16 from Mr. Salemi, follow by testimony from Dr. Han.

04:48:29 17 And then we will -- thinking about the comments of
04:48:32 18 the Court earlier, I was going to suggest for your
04:48:37 19 consideration, that we -- with respect to the underlying
04:48:40 20 criminal trial, that we mark the openings and the closings
04:48:45 21 as written exhibits that we can agree to submit to the jury,
04:48:48 22 and if they chose to read them later, they can read them
04:48:52 23 later, but that we offer the testimony -- it's actually of
04:48:56 24 five witnesses. It's four fairly short testimony from four
04:48:59 25 police officers, and one from Kate Corbett. Ms. Corbett is

04:49:03 1 unable to be here herself; however, we have someone who will
04:49:07 2 play her role and read her part.

04:49:09 3 We have two individuals who will read the parts of
04:49:13 4 the prosecutor, the same person throughout, and the same
04:49:16 5 person reading the roles of defense lawyer throughout. None
04:49:19 6 of the lawyers in this room, so it doesn't confuse the jury.
04:49:22 7 And we have the actual four police officers that testified
04:49:25 8 at the criminal trial coming in.

04:49:27 9 THE COURT: All right. Jury instructions for
04:49:29 10 that trial?

04:49:31 11 MR. KELLY: We have those, as well. We can
04:49:34 12 mark those, we can do it however you wish, Your Honor.

04:49:36 13 THE COURT: Do you have an agreement? It
04:49:38 14 seems to me -- it seems to me that might be important.

04:49:42 15 MS. HEDGES: Yeah. They would have to be
04:49:43 16 redacted. But those weren't in your original --

04:49:46 17 MR. KELLY: We have redacted out anything
04:49:48 18 relating to the school zone question.

04:49:51 19 THE COURT: All right. So I do think that we
04:49:54 20 should introduce as an exhibit, also, the jury instructions,
04:49:56 21 if this jury is going to be analyzing that trial. And if
04:50:01 22 whether or not something could have been different, they
04:50:02 23 have to know what the rules of that trial are. So we'll
04:50:05 24 mark for exhibits openings, closings, and jury instructions.
04:50:09 25 Sounds fine to me. And we will read the evidence that you

04:50:12 1 just told me about. It was a fairly short trial.

04:50:15 2 MR. KELLY: It was. It was done in a day,
04:50:17 3 effectively. So I think, Your Honor, that we probably could
04:50:20 4 get to the testimony, reading the testimony of -- one of the
04:50:23 5 officers is unavailable on Friday, so we would have to call
04:50:26 6 him. That's Officer Harry Jean was his name. And then we
04:50:29 7 would probably call the chemist, the role of Kate Corbett.

04:50:34 8 THE COURT: All right.

04:50:35 9 MR. KELLY: And then we would call the other
04:50:36 10 three officers on Friday morning. And I would expect that
04:50:39 11 we would be done with the testimony -- counsel need to
04:50:43 12 confer on our side, in light of your ruling in the morning
04:50:46 13 relative to the OIG report, as to whether or not we need to
04:50:49 14 call another witness just to explain what the OIG is and
04:50:53 15 what their function is and what their limitations are, and
04:50:56 16 the like. And that's something that we need to discuss
04:50:58 17 momentarily.

04:50:59 18 THE COURT: Sounds like, from what you're
04:51:01 19 saying, it's likely, in a fairly comfortable way, to do
04:51:06 20 closings on Friday?

04:51:07 21 MR. KELLY: I personally don't like doing
04:51:09 22 Friday afternoon closings. If it were me, Your Honor, I
04:51:13 23 would almost prefer to do a jury instruction conference and
04:51:16 24 close on Monday morning, just because it gives you an
04:51:19 25 opportunity to organize your thoughts, and you get the jury

04:51:22 1 fresh, and it just seems to move better. But that's your
04:51:25 2 call, Your Honor.

04:51:25 3 THE COURT: Well, that may not be a bad
04:51:29 4 suggestion.

04:51:29 5 MR. TUMPOSKY: You know, we may also
04:51:31 6 potentially have a rebuttal witness, the state police who
04:51:35 7 interviewed the various defendants, depending on whether
04:51:38 8 impeachment material is going to be necessary.

04:51:40 9 THE COURT: Okay. Well, it certainly seems
04:51:42 10 there's -- even under -- even under a scenario where you
04:51:46 11 call more witnesses, it seems like we are closing Monday at
04:51:49 12 some point.

04:51:51 13 MS. HEDGES: Correct.

04:51:51 14 THE COURT: Does that sound fair?

04:51:53 15 MR. TUMPOSKY: Yeah, that seems fair.

04:51:54 16 THE COURT: Even if you have to call a couple
04:51:55 17 extra witnesses?

04:51:56 18 MR. KELLY: I think that sounds right, Your
04:51:58 19 Honor.

04:51:58 20 MS. HEDGES: Yeah.

04:51:58 21 THE COURT: So I'm not promising you when. I
04:52:01 22 might force you to do a Friday, 4 o'clock closing. Just
04:52:05 23 you, Mr. Kelly.

04:52:07 24 Yeah, no, I understand. So we'll play it as it
04:52:10 25 goes.

04:52:10 1 MR. KELLY: And Your Honor, at some point, we
04:52:12 2 would like to perhaps just take ten minutes or five minutes
04:52:16 3 and publish the photographs there to the jury, whether it's
04:52:19 4 just before break or start of the day, and let them flip
04:52:23 5 through the photographs. They've seen them from a distance,
04:52:26 6 but they haven't actually looked at them.

04:52:28 7 THE COURT: Yeah. If you can get a couple
04:52:31 8 more tripods in here or something. But taking up trial
04:52:34 9 time -- I've done it so many times, and the jurors are
04:52:37 10 handing each other -- if they're handing little, small
04:52:40 11 pictures, it's one thing. But if they're going to be
04:52:44 12 handing these bigger things to each other -- if you find a
04:52:47 13 way to display them all, I'll take five, ten minutes to look
04:52:52 14 at them.

04:52:54 15 MR. KELLY: Ms. Herlihy and I have an idea in
04:52:57 16 that regard, and we'll make a suggestion in the morning.

04:52:59 17 THE COURT: All right. Do you have the
04:53:00 18 e-mails that you need to work with?

04:53:02 19 MR. TUMPOSKY: Yes.

04:53:02 20 THE COURT: To work with the Inspector
04:53:04 21 General?

04:53:05 22 MR. TUMPOSKY: They were disclosed -- oh.
04:53:07 23 The Inspector General. I'm sorry.

04:53:08 24 THE COURT: Yeah. The e-mail from us.

04:53:10 25 MR. TUMPOSKY: Do you guys have our --

04:53:13 1 THE LAW CLERK: I sent it to the address.

04:53:17 2 MS. HEDGES: To our address or their address?

04:53:21 3 THE LAW CLERK: Both.

04:53:24 4 MS. HEDGES: Okay. Great.

04:53:24 5 MS. HERLIHY: To the extent you don't have

04:53:26 6 it, I'll forward it.

04:53:28 7 MS. HEDGES: Okay. Great. We did get the

04:53:29 8 e-mails from the Department of Public Health. There was an

04:53:31 9 issue about the way they -- they were inaccessible. But I

04:53:34 10 think our associate has helped them figure that out. So

04:53:38 11 there was a technical problem. So we got them after 2:00,

04:53:41 12 so hopefully, we'll be able to go through them.

04:53:44 13 THE COURT: What are you going to do with

04:53:45 14 that? Those are documents that you're going to seek to

04:53:48 15 admit.

04:53:48 16 MR. TUMPOSKY: Upon review.

04:53:49 17 THE COURT: But you need them for

04:53:51 18 cross-examination.

04:53:51 19 MS. HEDGES: Cross-examination.

04:53:52 20 THE COURT: All right. Then I'll hold you,

04:53:54 21 I'll let you reserve as to whether or not you might want to

04:53:57 22 introduce those, as well.

04:53:58 23 MR. TUMPOSKY: Thank you.

04:53:59 24 MS. HEDGES: Thank you.

04:53:59 25 THE COURT: You'll be able to tell me that in

04:54:02 1

the morning?

04:54:02 2

MR. TUMPOSKY: I would hope so.

04:54:03 3

MS. HEDGES: It's going to be a long night.

04:54:05 4

THE COURT: Yeah.

04:54:06 5

MS. HEDGES: Thanks.

04:54:07 6

THE COURT: All right. We'll see everyone at

04:54:08 7

a quarter to 9:00.

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THE DEPUTY CLERK: All rise.

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(Court in recess at 4:54 p.m.)

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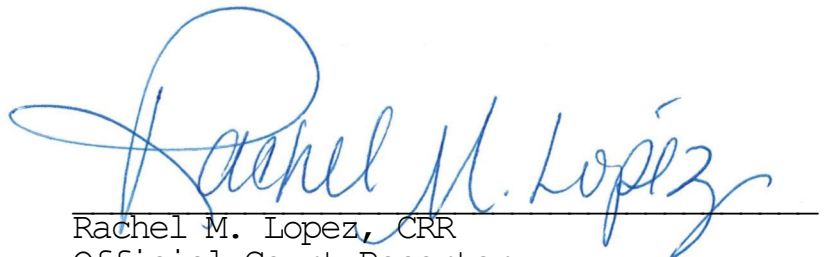
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Dated this 9th day of March, 2016.

/s/ RACHEL M. LOPEZ



Rachel M. Lopez, CRR
Official Court Reporter